SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 108

SEARS, ROEBUCK AND CO., PETITIONER,

vs.

THE STIFFEL COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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No. 1020

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 13724

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

Honorable Julius H. Miner, Justice Presiding.

THE STIFFEL COMPANY, Plaintiff-Appellant,

vs.

SEARS, ROEBUCK AND CO., Defendant-Cross Appellant.

Appendix to Brief for Plaintiff-Appellant
—Filed June 27, 1962

[fol. 3]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA,
GREENSBORO DIVISION

Civil Action No. C-172 G-57
Equitable Relief Sought

THE STIFFEL COMPANY, Plaintiff,

vs.

SEARS, ROEBUCK & Co., Defendant.

COMPLAINT—Filed October 17, 1957

To the Honorable Judge of the District Court of the United States for the Middle District of North Carolina:

Plaintiff alleges:

Count I.

Patent Infringement.

1. Jurisdiction of this Court arises from the Patent Laws of the United States, U. S. Code Title 35, and 28 U. S. Code § 1338(a) and (b) and § 1400(b).

2. Plaintiff, The Stiffel Company, is an Illinois corporation having its principal place of business at 525 West Superior Street, Chicago, Illinois.

3. Defendant, Sears, Roebuck & Co. is a New York corporation having a regular and established place of business at Greensboro, North Carolina, within the jurisdiction of this Court, and has committed acts of infringement therein.

4. Plaintiff, The Stiffel Company, is the owner by assignment of United States Letters Patent No. 2,793,286, duly and legally issued to T. A. Stiffel on May 21, 1957 on a lighting fixture.

[fol. 4] 5. Plaintiff, The Stiffel Company, is the owner by assignment of United States Design Letters Patent No. 180,251, duly and legally issued to T. A. Stiffel on May 7, 1957 on a design for a lighting fixture.

6. Plaintiff, The Stiffel Company, has subsequent to the dates of the invention of the patents in suit manufactured and sold and is presently manufacturing and selling lighting fixtures covered by said patents.

7. Since the issuance of said patents, Plaintiff has placed the required statutory notice on lighting fixtures covered by said patents and manufactured and sold by it.

8. Defendant, after Plaintiff began the manufacture and sale of said lighting fixture, has been engaged in the sale of lighting fixtures which infringe the said patents without the license and consent of Plaintiff, has advertised and offered for sale and sold and is continuing to advertise, offer for sale and sell, within this District and elsewhere, lighting fixtures identical to and copies of Plaintiff's lighting fixture in infringement of said patents.

Count II.

Unfair Competition.

9. Jurisdiction of this Court arises from the Patent Laws of the United States, U. S. Code Title 35, and 28 U. S. Code § 1338(a) and (b).

10. Plaintiff, The Stiffel Company, is an Illinois corporation having its principal place of business at 525 West Superior Street, Chicago, Illinois.

11. Defendant, Sears, Roebuck & Co. is a New York corporation having a regular and established place of business at Greensboro, North Carolina, within the jurisdiction of this Court, and has committed acts of infringement therein.

12. Plaintiff, The Stiffel Company is engaged in the busi- [fol. 5] ness of manufacturing and selling lighting fixtures throughout the United States and has had created for it, new designs in said lighting fixtures, including the design

embodying that of the patents in suit; Plaintiff is known among the trade and the buying public as a manufacturer of lighting fixtures of original design and superior quality, which lighting fixtures, by virtue of the fact that they are readily distinguishable from lighting fixtures of other manufacturers, are recognized as the products of Plaintiff.

13. The design of Plaintiff's lighting fixture involved herein is an original and unique design, created for and exclusively owned by Plaintiff, and lighting fixtures incorporating said design and configuration have been sold exclusively by Plaintiff in a form and configuration of distinctive and instantly recognizable appearance incorporating a number of new and original design features, and said lighting fixture is recognized as a product of Plaintiff.

14. Plaintiff's said lighting fixture has been extensively advertised and Plaintiff has built up a valuable business and good will in the sale thereof.

15. The appearance of said lighting fixture has come to be recognized by the lighting fixture trade, and by the purchasing public, as distinctive; it has become identified and associated with Plaintiff as a product of its exclusive manufacture.

16. After Plaintiff had built up a valuable business in said lighting fixture, Defendant started to sell and is presently selling a lighting fixture which is a slavish and willful copy and counterfeit of the details of the ornamental, distinctive and original appearance of Plaintiff's lighting fixture; Defendant has sold and is selling its said lighting fixture to the same public that purchases Plaintiff's lighting fixture, all for the purpose of appropriating the business that would otherwise inure to the Plaintiff.

17. Defendant's counterfeit lighting fixtures cannot be [fol. 6] distinguished in ornamental appearance and design from those of Plaintiff, except that Defendant's lighting fixtures are of inferior workmanship and quality and sell for a lower price than Plaintiff's lighting fixtures.

18. Defendant has unlawfully conspired with the manufacturer of Defendant's lighting fixture and has stimulated

said manufacturer to counterfeit Plaintiff's lighting fixture in all design and ornamental details.

19. The sale by Defendant of its lighting fixtures has resulted in confusion in the trade and in unfair competition with Plaintiff; since Defendant's lighting fixtures have appeared on the market Plaintiff has lost sales in said lighting fixtures, and has suffered great damage to its business.

20. The sale of Defendant's lighting fixtures has impaired the distinctiveness of the heretofore unique appearance of Plaintiff's lighting fixture and has so cheapened said lighting fixture in the eyes of the public as to impair the prestige for the product created through Plaintiff's integrity, skill, effort, and expenditure of money.

21. By its acts set forth above, Defendant has competed unfairly with Plaintiff causing great damage and irreparable harm and injury to Plaintiff, and Defendant unjustly enriched itself with benefits at the expense of Plaintiff, and as a result of such unlawful acts of Defendant, Plaintiff has suffered great damage.

22. This charge of unfair competition arises out of the sale of the same lighting fixtures charged to infringe Plaintiff's patents in Count I hereof, and is related to that charge of patent infringement.

Wherefore, Plaintiff prays that this Court enter judgment in Plaintiff's favor, adjudging and ordering that:

(a) Plaintiff's Letters Patents 2,793,286 and Design No. 180,251 are valid;

(b) Defendant has infringed said Letters Patents;

[fol. 7] (c) Defendant has competed unfairly with Plaintiff in the sale of lighting fixtures;

(d) Defendant account for and pay to Plaintiff its damages, and a sum in excess thereof, not to exceed three times actual damages;

(e) The award of attorneys' fees and costs to Plaintiff;

(f) Defendant be enjoined from further infringement and from acts of unfair competition; permanently and pendente lite;

(g) Plaintiff be granted such other and further relief as may be proper.

The Stiffel Company, By Welch Jordan, Attorney for Plaintiff, 619 Jefferson Standard Building, Greensboro, North Carolina.

Casper W. Ooms, Robert C. Williams, 209 South La Salle Street, Chicago 4, Illinois.

Max R. Kraus, 105 W. Adams Street, Chicago 3, Illinois. Of Counsel.

[fol. 8]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

DEFENDANT'S ANSWER AND COUNTERCLAIM —Filed August 1, 1958

Answer.

Defendant, for its answer to plaintiff's complaint herein says:

First Defense.

1. Defendant admits Federal jurisdiction under the patent laws of the United States, but denies having committed any actionable offense.

2 & 10. Defendant admits, on information and belief, the allegations of paragraphs 2 and 10 of the Complaint.

3 & 11. Defendant admits that it is a New York corporation with places of business at Greensboro, North Carolina, and Chicago, Illinois, but denies all other allegations of paragraphs 3 and 11 of the Complaint.

4-7. Plaintiff is not informed, save by the Complaint, as to the matters alleged in paragraphs 4-7, inclusive, of

the Complaint, and accordingly puts plaintiff to its strict proof with regard thereto.

8. Defendant denies the allegations of paragraph 8 of the Complaint.

9. Defendant admits pendent jurisdiction, as alleged, but denies having committed any actionable offense.

12. Defendant denies that plaintiff created any new designs in lighting fixtures; defendant further denies that any lighting fixtures put out by plaintiff are at all distinctive, but quite the contrary; as to the other allegations of paragraph 12 of the Complaint, defendant is not informed, save by the Complaint, as to the truth or falsity thereof, and accordingly puts plaintiff to its strict proof thereof.

[fol. 9] 13. Defendant denies the allegations of paragraph 13 of the Complaint.

14. Defendant admits plaintiff's having advertised its lighting fixtures, but denies that said goods have any good will whatever inuring to plaintiff, as alleged.

15-21. Defendant denies all of the allegations of paragraphs 15-21, inclusive.

22. Defendant admits a relation between Counts I and II of the Complaint under Title 28, U. S. C., Section 1338 (b).

23. Defendant denies each and every allegation of the Complaint not hereinabove specifically admitted.

Second Defense.

24. Defendant avers, on information and belief, that the patents in suit, and each of them, are invalid and of no legal force and effect because:

(a) Theophile A. Stiffel was not the original and first inventor of the alleged inventions or improvements described and claimed therein;

(b) The alleged inventions and improvements were known to or used by others in this country before the alleged invention thereof by said Theophile A. Stiffel; and were made and sold by others prior thereto;

(c) The alleged inventions and improvements were patented and described in printed publications before the alleged invention thereof by said Theophile A. Stiffel;

(d) The alleged inventions and improvements were patented or described in printed publications and were in public use or on sale more than one year prior to the respective dates of filing of the applications on which said patents issued;

(e) The alleged inventions and improvements were described in patents granted on applications for patents filed [fol. 10] in the United States by others before the alleged invention thereof by the said Theophile A. Stiffel;

(f) Said Theophile A. Stiffel did not himself invent the subject matter sought to be patented;

(g) Before the said Theophile A. Stiffel's alleged invention of the respective subject matter disclosed and claimed therein, the alleged inventions and improvements were made by others who had not abandoned, suppressed or concealed the same.

(h) Because the alleged inventions or improvements purported to be covered by said patents are devoid of substantial novelty or invention and involved only the ordinary skill of the art, in view of the well known state of the art prior to and at the respective dates of the alleged inventions by said patentee, and the differences, if any between said alleged inventions and the prior art are such that the subject matter of said patents, as a whole, would have been obvious at the time the alleged inventions were made to a person having ordinary skill in the art to which said subject matter pertains.

(i) Because the alleged inventions or improvements purported to be covered by said patents did not at the respective dates of the applications therefor constitute subject matter or invention patentable under the law, but were obvious aggregations of old and well known mechanical expedients arranged for use in an obvious manner and devoid of invention.

(j) As to said design patent in suit, said patent is invalid for the further reason that the subject matter of said patent is completely lacking in any ornamental or esthetic character whatever, taken as a whole or as to any feature or element thereof, but, on the contrary, is strictly functional and utilitarian in all respects, and, accordingly, not proper subject matter for a design patent under 35 U. S. C., Sec. 171.

[fol. 11] Third Defense.

25. As a further and separate defense in its behalf, defendant avers that the claims of said patents are so limited and restricted by the prior art, as well as by the acts of said patentee and his duly authorized attorney or attorneys in the prosecution of his applications for said patents and, particularly, by the limitations and restrictions made in said applications, voluntarily and under the requirements of the Commissioner of Patents, as to exclude any device or apparatus sold by defendant, and said patents are thereby limited and restricted to the particular devices and arrangements of parts therein described, and plaintiff cannot now seek to obtain a broader construction of said claims.

Fourth Defense.

26. Further answering as to Count II, defendant alleges that it is a matter of common knowledge in the lamp industry in the United States that the Stiffel patents in suit are invalid for the reasons stated above; that, by reason of said knowledge, lamp fixtures embodying in combination all of the structural and mechanical features of the lamp fixtures put out by plaintiff, and the esthetic features, if any, for a long time have been, and are being, widely and notoriously made and sold throughout the United States by many manufacturers and vendors of lamp fixtures without leave or license of plaintiff. By reason of the aforesaid facts the said lamp fixtures put out by plaintiff are lacking in distinctiveness and, accordingly, there is no good will inuring to plaintiff therein so far as any shape or design is concerned, or otherwise, such shape or design being merely

that which is common in the trade and merely utilitarian in character.

[fol. 12] Fifth Defense.

27. Further answering as to Counts I and II of the Complaint, defendant alleges, on information and belief, that plaintiff has entered this court with unclean hands by reason of the fact that plaintiff has widely advertised for sale throughout the United States articles purporting to embody the alleged inventions, constructions and designs forming the subject matter of plaintiff's Complaint herein and in the aforesaid advertising plaintiff referred to said goods as the design and original creation of a nationally known industrial designer, to wit, Raymond E. Lowey, contrary to the allegations of the plaintiff under oath in his applications for Letters Patent asserted in this suit wherein plaintiff described himself as the original inventor and designer of the same. Defendant further alleges, on information and belief, that the plaintiff's commercial success, if any, in connection with the promotion and sale of the aforesaid articles, designs and constructions forming the subject matter of the Complaint herein was largely due to the aforesaid advertising statements.

Counterclaim.

Defendant brings this Counterclaim under Title 28 U. S. C., Sec. 2201, and in support thereof avers:

1. Plaintiff, The Stiffel Co., is, on information and belief, an Illinois corporation with a place of business at 525 W. Superior Street, Chicago, Illinois; Defendant, Sears, Roebuck and Co., is a New York corporation with its principal place of business at 925 S. Homan Avenue, Chicago, Illinois.

2. There is pending before this Court a suit between these parties as captioned above, wherein plaintiff has charged defendant with infringement of Letters Patent Nos. 2,793,286 and D-180,251, in the sale of lamp fixtures, [fol. 13] and with unfair competition in connection with the same acts, which charges defendant has denied. De-

fendant, accordingly, avers that a justifiable controversy exists between the parties. Jurisdiction may be predicated on Title 28, Sec. 1338(a) and (b), U. S. C., and Sec. 2201.

3. Defendant here incorporates by reference all of its Second Defense of defendant's Answer, Supra.

4. Defendant here incorporates by reference all of its Third Defense of defendant's Answer, Supra.

5. Defendant here incorporates by reference all of its Fourth Defense of defendant's Answer, Supra.

Wherefore, defendant prays that a decree be entered as follows:

(a) Holding invalid and void the patents complained of as infringed by plaintiff.

(b) Holding that defendant has not infringed said patents.

(c) Holding that plaintiff owns no exclusive rights in any lighting fixture design or good will therein, as alleged.

(d) Holding that defendant has not been guilty of unfair competition.

(e) Dismissing the Complaint in all respects, with costs and reasonable attorneys fees to defendant.

(f) For such other and further relief as the equities of the case may require.

Sears, Roebuck and Co., By Frank H. Marks, Attorney for Defendant.

120 S. La Salle Street, Chicago 3, Illinois, August 1, 1958.

[fol. 18]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

Proceedings at the Trial

Before Hon. Julius H. Miner, United States District Judge,

Commencing November 2, 1960.

APPEARANCES

Present;

Horton, Davis & McCaleb by Warren C. Horton, Esq. and Max R. Kraus, Esq., both of Chicago, Illinois, on behalf of plaintiff.

Bair, Freeman & Molinare by Will Freeman, Esq., John S. O'Brien, Esq. and Dimitri D. Allegretti, Esq. and Lederer, Livingston, Kahn & Adsit by Frank H. Marks, Esq., all of Chicago, Illinois, on behalf of defendant.

After Opening Statements on behalf of both parties, the following proceedings were had:

THEOPHILE A. STIFFEL, called as a witness on behalf of plaintiff testified as follows:

He stated that he resides at 5490 South Shore Drive, Chicago, will be sixty-two years of age his next birthday, and that he is a lamp manufacturer, president of The Stiffel Company, an Illinois corporation. He has been engaged in the lamp business for forty years, starting first for International Lamp Company in 1919 and subsequently organizing his own company in 1932. During the war, he was engaged in the screw machine business for a company called the Stiffel Bradley Company but, after the war, resumed the lamp business with the plaintiff company.

Plaintiff manufactures high-grade lamps which he believes have been accepted as the finest lamp in America for quality, design, appearance. "We have never compro-
[fol. 19] mised to cheapen a lamp. It has always been the best we know how to make".

The lamps made by plaintiff are mostly of the home type and a few office lamps and the company made floor lamps and table lamps only until the advent of the pole lamp.

There is a differentiation in the lamp business between fixtures and lamps. A lighting fixture is a unit that is permanently hung from the ceiling and a portable floor lamp is one that is attached to a base and can be easily knocked over. Lighting fixtures require licensed electricians to install a wire but pole lamps do not require this as they can be plugged into any outlet.

"I am the applicant for the two patents in suit."

Whereupon, Stiffel patent No. 2,793,286 was offered and received in evidence as Pl. Ex. 1 and Stiffel design Patent No. 180,251 was offered and received in evidence as Pl. Ex. 2.

Resuming, the witness stated that the title of the patent Pl. Ex. 1 is "Lighting Fixtures" and that of Pl. Ex. 2 is "Lighting Fixture" and, as to how such titles were arrived at, he stated that he conceived the idea of hanging many different types of lighting elements, wiring permanently to the pole and also making a lighting fixture which plaintiff subsequently made and which are shown in plaintiff's catalogs shortly after the patent was granted. The fixtures look like the normal lighting fixture only they are made portable so they can be moved to different places in the room without the necessity of having an electrician come in and wire them permanently to the ceiling. This was the forerunner of the lighting fixture he had in mind at the time of the invention of the patents in suit. The lighting equipment shown in the two patents in suit are portable and, after the patents had been issued, he had assigned them to the plaintiff.

[fol. 20] Defendant conceded that the patents in suit are owned by plaintiff The Stiffel Company.

Resuming, the witness stated that the structures embodying disclosure of the two patents in suit were placed on sale by plaintiff in January of 1956 and that one of them was present in the courtroom.

Referring to this lamp manufactured by the plaintiff, the witness was asked to point out some of the structural features, not particularly referring to the patent.

The witness pointed out that the lamp was

> "internally wired, totally internally wired in a sectional pole. That has never been done before. No one has ever made a sectional pole that would fit between the floor and the ceiling in rooms of any height. It could even go up to 20 feet if necessary with an extension of the pole, which has never been done before. * * * In this particular pole, you will notice, these bullets are on a 180° angle. It holds it flat against the wall."

In this particular case, the bullets are not at 120° but they are all on the same plane. If necessary, this lamp could be placed against the wall where if the bullets were 120° one bullet might hit the wall. You could put it real close to the ceiling and close to the floor and still put a lighting fixture on there or something else and that was the reason for putting them on the same plane.

"Incidentally there were none before that were put on the same plane, not to my knowledge."

Relative to positioning the wire within the pole, the witness said:

> "It took us quite a while to figure out how to wire this pole completely internally and still be able to add different sections on it to make it reach between the floor and the ceiling at any different height. * * * It is little [fol. 21] work for the woman in the home to do and also to make it an easy package to ship and deliver in one piece."

He stated that there is no work that you have to do when you got the thing in your house, all you have to do is put the thing together as is, and put it to any height, to any extension you wish.

When the pole is installed like that, there is no wiring whatsoever outside at any point except the cord and the plug at the bottom. There are no wires at the lamp outlets, the wire being run internally through the socket, through the swivels and also with stops on the swivels so that they can't touch the wire and short-circuit the pole.

The wire runs up to the upper lamp as well as to the lower lamp and has contacts within the pole, the wiring itself being brought out at the bottom for plugging it into the outlet.

It is pointed out at the top and bottom of the pole there are rods with smaller diameters than the pole and the reason for that was mostly design. "You couldn't sell a pole in the home that looked like a plumbing fixture, from the floor to the ceiling, with this one straight tube." It was his idea to make it smaller because he thought that he had some knowledge of good design.

The portion at the bottom of the pole is not the same as that at the top, the lower portion being adjustable with the thread to make a finer adjustment so that if you happen to have a ceiling of a little different height than maybe you anticipated, you can still make the pole higher and extend still further down and the lower portion is a finer adjustment on the pole.

At the top section, there is a steel, brass-plated tube, heavy steel. As the pin goes through the tube, it actuates a spring. When the rod is pushed down within the pole, [fol. 22] the spring becomes compressed and pushes out the top element. There was a lot of thought given to the length of the plunger because if you make it too long, you can punch a hole into the ceiling. You've got to be very careful in distribution of the sections of the pole, that they are made the right length. They can come within a half an inch or so of the right length, but if you start making the pole of different sizes than made by plaintiff, you have to get a plunger that is long to take up the deficit between the floor and the ceiling or you will punch a hole in the ceiling, particularly the plasterboard ceilings which they have in the homes today and all that was taken into consideration.

As to the function performed by the pressure of the spring against the upper extension, the witness pointed out that at the top was a non-marking rubber cushion and pressure against that will not mark the ceiling. It will also keep it from side motion and it requires very little movement to keep the thing in position. As to whether consideration was given to the location of that spring plunger

and the end of the pole to which it should be, the witness stated:

> "There certainly was. Originally we made the pole upside down and had the spring on the bottom until someone leaned against the pole and it fell down and then we decided to put the spring on the top."

The witness stated that the pole lamp before him was the first style manufactured and sold by the plaintiff company and that it was brought out on the market in 1956. Plaintiff was delivering them within thirty days after marketing.

The following questions and answers were then made:

"Q. After your patents issued, did you give any mark [fol. 23] to the patents, the product, in any way with patent numbers?

A. We certainly did.

Q. There is on this pole a paper tag. Will you tell us what that is?

A. That is a tag identifying the number of the lamp and also with two patent numbers on it. Those tags were shipped on every pole.

Q. Was it the same tag used on all kinds of poles, all lamp poles you made?

A. No, sir. If the design was different, we left off the design number. But, we felt that all the poles we made, at least, come under the other patent.

Q. The mechanical patent?

A. The mechanical patent, yes, sir."

Whereupon, the Stiffel pole lamp was marked Pl. Ex. 3 and offered and received in evidence.

The witness then identified the tags which he had described, one having only the mechanical patent number on it and the other having both the mechanical patent number and the design patent number and stated that those were the tags used by the plaintiff on its "Lampole" products.

Whereupon, the tag having only the mechanical patent number was offered and received in evidence as Pl. Ex. 4 and the tag having both the mechanical patent number

and the design patent number was offered and received in evidence as Pl. Ex. 5.

The witness stated that after the two patents had been issued, the plaintiff company used these tags on all of its products, the one with the mechanical patent number being used on all of its pole lamps which plaintiff felt came under the mechanical patent and the tag including the design patent number was used on poles including the design but not on poles different in design.

[fol. 24] After the pole lamp was first produced by plaintiff, it was first displayed to the public in January, 1956 at the Spring Market in the Merchandise Mart in Chicago.

The witness stated that the reception of plaintiff's "Lampole" by buyers at that market was "tremendous" and that "practically everybody in the country that was at the show came to see our booth."

The plaintiff then manufactured and sold the pole lamps "all that we could make" and still manufactures them and has them in several varieties.

Plaintiff puts out catalogs and the plaintiff's 1957 catalog illustrating the pole lamps and other lamps made by plaintiff was identified by the witness. He pointed out that on page 18 of the catalog there was shown a lamp similar to the exhibit of the Stiffel product and stated that the catalog shows various uses of the pole lamps in various organizations.

Whereupon, the Stiffel 1957 catalog, including the portions illustrating the pole lamp but not portions illustrating ordinary table lamps, was offered and received in evidence, marked Pl. Ex. 6.

Mr. Stiffel then identified the 1957 Supplement Catalog put out by the plaintiff in that year illustrating pole lamps manufactured and sold by plaintiff and showing at page S-4 the particular sample produced in court. Referring to the other samples shown, he stated that they do not differ functionally so far as the plunger, the type of tube, the location of the wiring and the type of foot used therein from those previously discussed.

The 1957 Supplement Catalog was then offered and received in evidence as Plaintiff's Exhibit 7.

The witness was then shown another document which he identified as the 1958 catalog of the plaintiff, showing pole lamps manufactured and sold by plaintiff, and again also the lamp produced in court.

[fol. 25] The 1958 catalog was thereupon offered and received in evidence as Plaintiff's Exhibit 8.

The witness next identified the 1958 Supplement Catalog as a publication of the The Stiffel Lamp Company, disclosing pole lamps manufactured and sold by plaintiff and prices therefor, which document was then offered and received in evidence as Plaintiff's Exhibit 9.

The witness next identified a pole lamp which he said

> "was purchased in Greensboro, North Carolina from the Sears, Roebuck Company by one of our salesmen • • • before this suit was filed",

this suit having originally been filed in Greensboro.

The defendant's pole lamp so identified was offered and received in evidence as Plaintiff's Exhibit 10.

Pointing out the structural features present in Plaintiff's Exhibit 10, the witness stated that it collapses in the same manner as plaintiff's pole lamp, is of the same length and includes a pole that comes apart. On the foot, there is a thread that screws out like plaintiff's. The rod at the foot is of reduced diameter and has a threaded element to adjust the position of the pole. At the top, it similarly has a rod of reduced diameter mounted on the top section by a spring which compresses as the top is pushed down and pushes the reduced diameter rod at the top of the pole against the ceiling.

"Q. How is this entire lamp positioned in place when in use?

A. It is compressed against the ceiling and placed.

Q. Does the foot and top rest between the ceiling and the floor?

A. Yes.

Q. On the wiring now, where does the wiring come into this pole?

A. Through the swivels and down through the pole.

Q. And up the bottom?

[fol. 26] A. Up the bottom.

Q. How is that attached to a power supply?
A. With a cord and plug.
Q. Like in a floor plug?
A. In a regular lamp.
Q. To fit into a floor plug?
A. Yes."

The witness then identified a photograph which he had made of Plaintiff's Exhibit 10 showing it in assembled condition.

The photograph was offered and received in evidence as Plaintiff's Exhibit 11.

The witness next identified another photograph of Plaintiff's Exhibit 10 showing all of the portions and elements of the pole, but disassembled.

This photograph was then offered and received in evidence as Plaintiff's Exhibit 12.

* * * * * * * *

[fol. 52] William H. Pemberton, called as a witness on behalf of plaintiff, testified as follows:

He stated that he is thirty-five years old, resides at 1937 Old Willow Road, Northfield, Illinois, and has the Home Accessories Division of the Old Orchard Store of Marshall Field & Company, by which company he has been employed for thirteen years.

In 1956, he was a lamp buyer for Marshall, Field & Company and managed the lamp section. He became acquainted with the Stiffel lamps in 1956,

> "The January market, as I recall, was the introduction of the Stiffel Lampole."

He testified further as follows:

* * * * * * * *

"Q. Do you recall what the impact was at the market of that lamp at that time?

A. Well, it was quite a great one because it was something rather new, different and revolutionary in the lamp business at that time.

Q. Did you, as a buyer for Field's buy such lamp?

A. Yes, we did.

Q. What was the reception by the public of that lamp?

A. It was very well received, and we made a special [fol. 53] display in our section at that time to take care of the display of this particular new item.

Q. Those lamps, are they still sold by Marshall Field & Company?

A. Are they still sold today?

Q. Yes.

A. Yes, they are.

Q. In your position with Marshall Field & Company at that time, and let us say—how long after 1956 did you remain as a lamp buyer there?

A. I transferred from the downtown store to Old Orchard in October of 1958.

Q. Prior to that transfer, did you have any occasion when complaints were made to you by customers involving lamps sold by Marshall Field and made by the Stiffel Company?

A. Would you rephrase that? Did I have complaints from customers about Stiffel Lampoles sold by Marshall Field & Company?

Q. Yes, as to whether or not any lamps sold by Marshall Field & Company and made by Stiffel were or were not the same as those sold by Sears, Roebuck.

A. We did have customers inquire of us, if lamps that looked to be similar to the Stiffel Lampole were the same, and what was the reason for the price difference in some instances.

Q. I show you a copy of a letter, it bears your name as addressee, and apparently written by Mr. Fred Phillips, and dated November 13, 1957, and ask you whether you received the original of that letter.

A. Yes, I did. This was a letter that came through our complaint department and was referred to me by the merchandise man. The customer's complaint was based upon the fact that she had bought a Stiffel Lampole at $39.50 as I recall, and she had then thereafter, seen a [fol. 54] catalog item that looked to be similar at a much lesser price, and her question to me was why was this same pole half the price from somebody else.

To give her a valid answer I contacted Mr. Phillips and asked him to give me a little more information as to the itemized story as to what qualities and what the various salient factors were about his product that would justify an answer to our customer.

Q. Was that a Sears lamp that reference was made to?

A. It was advertised in a Sears catalog, yes.

* * * * * * *

The letter identified by the witness was thereupon offered and received in evidence as Plaintiff's Exhibit 16.

He further testified as follows:

"Q. Let me ask you this. When you saw the Stiffel pole lamp you say at the show in 1956, had you seen any such lamp at any time prior thereto?

A. No. To me as a lamp buyer this was something radically new in the lamp business."

Cross examination.

By Mr. Freeman:

Q. Did you write to the Stiffel Company when you received the complaint from Mrs. John J. Driscoll?

A. No, sir, I called Mr. Phillips.

Q. Was Mrs. Driscoll's complaint in writing or orally?

A. No, it was a letter. It came, as I mentioned before, it came through our Adjusting Service, attached to a yellow form that we use in the business.

Q. Have you asked Marshall Field to make a search for that letter?

A. I did, and my answer was that it is not logical that it would be in the file at this point.

[fol. 55] Q. I asked you whether a search was made as distinguished from what is logical.

A. There was a search made and the letter was not produced as a result of that search.

Q. Did you make it?

A. No.

Q. When you received Mr. Phillips' letter, did you write to Mrs. John J. Driscoll?

A. To the best of my recollection, I think I did. I may have called her, but I think I did write an answer to her, based on this information.

Q. Have you made a search for that letter?

A. No, I have not.

Q. Do you recall what you wrote Mrs. Driscoll?

A. Well, it is a little bit hazy at this moment. I am sure I used the information he gave me to bear out the difference in quality of workmanship between the product we sold and the product that she saw.

Q. In other words, the price differential Mr. Phillips advised you, and you in turn advised Mrs. Driscoll, was due to the fact of a superior product quality-wise; correct?

A. Correct.

Mr. Freeman: That is all.

* * * * * * *

Bernice Passmore, called as a witness by plaintiff, testified:

That she is the lamp and gift buyer at the John M. Smyth Furniture Company, located on Michigan Avenue in Chicago where her office is located and she had had that position for about nine years, but has been with that company a lot longer period. She was the lamp buyer in 1956 and the Stiffel pole lamp came to her attention as a buyer in 1956, at the 1956 Show in the Merchandise Mart. She further testified as follows:

[fol. 56] Q. Have you ever, prior to that, seen a pole lamp similar thereto?

A. No, I had never.

Q. What was the reaction of the buyers at the show to the lamp pole that was displayed by Stiffel?

A. Well, it seemed to be very widely accepted. As a matter of fact, it seemed to create a mild sensation.

Q. Did you buy some for your store?

A. Yes, indeed we did.

Q. How was it? Was it successful in sales?

A. Accepted very readily, yes.

Q. You continued to sell it?

A. Yes.

Q. At that time did you ever have any complaints about lamps sold by Smyth as compared with lamps sold by Sears?

A. Yes. I recall having such a complaint in the mail, and it came to us through our Adjusting Department, and we didn't know what to do with it. So, we called Mr. Phillips, and to my best recollection he said to send him the letter. I am not real sure what happened to it. But, I think he asked for the letter.

Q. Have you looked through the files for any of those letters at your office?

A. Frankly I didn't because it wouldn't have been in our office, and I know the gentleman who handled it wouldn't have had it in his record after this length of time.

Q. Do you know who made that complaint to you?

A. No, I don't remember the customer's name.

Q. Do you remember anything more about that complaint as to the nature of it, what the substance of it was?

A. She stated that she had seen a lamp at this store, that was exactly like what she had purchased from us at a higher price. I don't remember what the price of [fol. 57] the other lamp was, but I know there seemed to be a vast difference.

Q. Does your company at the present time buy lamps from Stiffel Company?

A. Yes, we do.

Q. Including pole lamps?

A. Yes.

Cross examination.

By Mr. Freeman:

Q. Did the person that complained to you tell you whose lamp she had seen?

A. Yes, she mentioned the name of the store.

Q. What was the name of the store?

A. Sears, Roebuck and Company.

Q. So that you knew that that was a product sold by Sears as a Sears product that she was talking about?

A. Yes.

Q. And I think in your business, and I am acquainted with your company, you have a reputation for high grade merchandise sold at relatively high prices.

A. At relatively high prices? Well,—

• • • • • • •

Q. Well, I will call it high quality.

A. Yes, we sell quality merchandise in all price categories I would say.

Q. Did you take the matter up with Mr. Phillips or anyone at the Stiffel Company?

A. Yes, I did.

Q. What were you informed?

A. Well, he didn't have anything to offer at the time in the way of information, but he said, to the best of my recollection, to send the letter to him and he would take care of the matter. So, we did and he didn't give us any reason to be concerned after that.

[fol. 58] Q. Did he tell you that the lamp that they had sold you included some Bakelite de-fusers, and that was a far better product?

A. Well, of course we knew it was a better product. We knew that. We know Stiffel.

Q. You knew it was a better product?

A. Yes, sir, we knew ours was a better product.

Q. And obviously, the price is higher for better products.

A. Yes.

Mr. Freeman: That is all.

• • • • • • •

Fred Phillips, called as a witness for plaintiff, testified that he is forty-nine years of age, resides at 1870 Clifton Avenue, Highland Park, Illinois and is vice-president and sales manager of The Stiffel Company, with whom he has been associated with since June of 1947 in that capacity.

His occupation for the most part has been sales manager, although he has other administrative duties, including advertising done by The Stiffel Company. He further testified as follows:

Q. You are acquainted of course, with the company's pole lamps?

A. Yes.

Q. Did you attend the show in 1956 at which that was first offered to the public?

A. Yes, I did.

Q. What was the public reaction to the pole at that time?

A. I would call it positively sensational and probably the best, most active market that I ever witnessed at Stiffel Company before or since.

[fol. 59] Q. Did you, after that, get orders for pole lamps manufactured by Stiffel?

A. We received orders at the market and subsequent to that.

Q. Have you continued to sell the pole lamps?

A. Yes, we have.

Q. Have you made a summary of the sales of pole lamps by the Stiffel Company since it was announced?

A. Yes.

Q. Can you tell us what that is?

A. I brought some figures with me. We introduced the pole lamp in January of 1956, and shortly after the market we started shipping them. It took us some time to get into production, but the figures I have show that we sold $653,259, sold and shipped, in 1956.

In 1957 we shipped $1,005,226. In 1958 we shipped $859,014. In 1959 we shipped $739,351. For the four years we shipped $3,256,850. of the pole lamps.

Q. Did you have the figures for 1960?

A. We have an estimated figure of $500,000 for the year 1960 based on the sales to date.

Q. Did you have anything to do with the preparation of the Stiffel catalogs?

A. Yes.

Q. In these catalogs, Plaintiff's Exhibits 6, 7, 8, and 9, which have been identified, did you participate in any way or direct the preparation of those catalogs?

A. Yes, sir.

Q. Do those illustrate the line of lamp pole products which your company sold in those years?

A. Yes, sir.

Q. In the one case, in Plaintiff's Exhibit 8, pages 2 and 3, there is reference to national advertising done by your company. Did you have anything to do with that?

A. Yes, sir.

[fol. 60] Q. On those pages, there are named and listed several, a number of magazines, are there not?

A. Yes, sir.

Q. Will you state what some of those magazines are, please?

A. Well, in the 1958 catalog, House Beautiful, House & Garden, Living, and the Sunday newspaper supplements in twenty-five major cities.

Q. Was that advertising done in that year of 1958?

A. This was advertised in April and May of 1958.

Q. Now, was similar advertising done prior to the issuance of that 1958 catalog?

A. Yes, sir.

Q. When did the advertising of that product start with your company?

A. In the spring of 1956.

Q. Have you continued to advertise?

A. Yes, sir.

Q. Did you have anything to do with the material published in Lamp Journal for July of 1957?

A. Yes, sir.

Q. What were the circumstances under which you submitted that material for publication?

A. This advertising was arrived at in discussion with our legal counsel and after the ad was composed, it was turned over to the—well, we were working with the advertising agency to compose the ad and turned it over to the publications.

Q. Did they call the attention of the trade to these patents that are now in suit?

A. That is what it was intended to do, sir.

Q. What are the patents referred to in there? Are they the two patents in suit?

A. Yes.

Q. Now, after you had announced the lamp pole in the [fol. 61] 1956 show, did you make any effort to see whether competitors copied that product in any way?

A. After we showed this at the 1956 show?

Q. Yes.

A. Yes. It is my job to keep abreast of the things that happen in the market and I try to keep up, to keep aware of these things and inquire about them.

Q. Were there clippings which you obtained to know about the activities of competitors in the sale of lamp poles?

A. Well, there weren't any clippings for quite some time after we introduced our item.

Q. First of all, you say for some time. For how long?

A. Oh, probably several months, anyway. I am referring to competitive products. There were many clippings that related to the item that we introduced.

Q. Yes. Then there were some ads and things of other companies that you saw?

A. Yes.

Q. You were aware of what was being offered?

A. I may not have been aware of everything, but I was aware of most of the things.

Q. Were there a number of companies who offered for sale lamp poles after you had announced to the public the Stiffel Lampole?

A. Yes, sir.

Q. Did they have anything to do with the publication of the notice which was printed in the Lamp Journal?

A. Yes, sir.

Q. At the time that that notice was inserted in the Lamp Journal, the two patents in suit had been issued, is that correct?

A. Yes, sir.

Q. In that way, you called it to the trade's attention?

A. That was the intention.

[fol. 62] Q. When did you first learn of the Sears, Roebuck and Company offering for sale pole lamps?

A. When their catalog came out. I believe it was 1957.

Q. Was that brought to your attention?

A. Yes, sir.

Q. At that time what happened down in Greensboro, North Carolina, if you know, so far as obtaining the lamp or evidence of sale?

A. I requested our southeast salesman to purchase the lamp, the pole lamp made by Sears that we felt was copied from our pole lamp.

Q. Is that the lamp marked Plaintiff's Exhibit No. 10?

A. Yes, sir.

Q. Did you get that, then, from your salesman?

A. Yes. The salesman shipped it to us and he got it from Sears Roebuck.

Q. Now, it was shortly after that that the suit was filed in Greensboro, was it not?

A. I believe so.

Q. And the suit was filed in Greensboro in 1957?

A. I believe that is correct.

Q. At that time, did you know who manufactured the Sears lamps?

A. I found out who manufactured the Sears lamp because I took the label off the carton the Sears pole lamp came in.

Q. Was it at that time you learned of Randolph Metals?

A. That is how we learned who the manufacturer was.

Q. Now, in the suit in Greensboro, were you told at that time that Randolph Metals was defending the case?

A. No, sir.

Q. When did you first meet Mr. Stein?

A. I never met Mr. Stein until a meeting in your office, I believe, during the deposition.

[fol. 63] Q. And Mr. Stein was the president of Randolph Metals, was he not?

A. I think that is correct.

Q. Now, at the time that you got this pole, Exhibit 10, from your salesman, did it have any labels or tags on it that you took off?

A. Everything that came with the pole, I have. There is an envelope in my folder, the folder on the desk there (indicating).

Q. This one (indicating)?

A. Yes, sir.

Q. I don't know what is in here. Was there any label in there that was on the lamp?

A. The only label that was inside was a sheet of instructions which I presume was intended to show the customer how the item went together. There was no other tag on the pole.

. . . . . .

Q. There were these assembly instructions, were there?

A. Right.

Q. Was there any other label in any way attached to the lamp?

A. There was a—I don't think anything else was attached to it. I do have some papers here that relate to that purchase.

Q. Let me just see what they are. Shipping records, receipts—

A. Here is a receipt that was given to our salesman who paid for the item.

• • • • • • •

Q. You don't know what the salesman said when he bought the lamp, do you?

A. No, sir.

[fol. 64] Q. You produced a receipt here. Is that the one that was sent you with the lamp?

A. Yes.

• • • • • • •

Whereupon, the assembly instruction sheet referred to by the witness was marked and offered in evidence as Plaintiff's Exhibit 17 and objection to it was sustained. The receipt identified by the witness was offered and received in evidence as Plaintiff's Exhibit 18.

The witness further testified that at the show where the Stiffel Lampoles were displayed by plaintiff, he saw Mr. Vallette and Mr. Stover, both representatives of Sears, Roebuck and Company, and that they were in the Stiffel showroom. At that time, Sears was not offering for sale any pole lamps.

• • • • • • •

[fol. 65] Cross examination.

By Mr. Freeman:

Q. I am going to give you a 1958 catalog which is Plaintiff's Exhibit 8 and I will give you my copy. Put a pencil X on the items which were included in the $859,000.00 total which you gave us a moment ago, for your sales in 1958. Have you done that?

A. Yes, sir.

Q. About how many Lampoles were included in the overall volume, dollarwise?

A. In that year?

Q. Yes.

The Court: How many items did he encircle?

Mr. Freeman: Four, eight, twelve, sixteen, twenty—a quick glance is twenty.

The Witness: I can't tell you the exact number of items. I can approximate it.

By Mr. Freeman:

Q. Well, will you give it, please?

A. I would say it would run around 35,000.

Q. That would, then, be at an average price of about twenty-five dollars or so, is that correct?

A. Somewhere around that.

Q. At your selling price of twenty-five dollars?

A. In that area, yes, sir.

[fol. 66] Q. At what do you sell the lamp that you have here, Plaintiff's Exhibit 3?

A. $21.50.

Q. And the Sears slip that we have here is one that has a $21.95 price, correct?

A. Yes.

. . . . . .

Q. I am going to ask you, with respect to Plaintiff's Exhibit 18 which comprises two sheets and which I agree to admit because it is on a Sears envelope or a Sears letterhead or invoice head, and I notice that on the second sheet that is fastened on, the sales number is 580 and the sales number on the top sheet is No. 1039 and the two prices for the merchandise are different. I am going to ask you whether or not those two sheets were fastened together when you received them or did you fasten them together?

A. No, sir. I fastened them together. These came separately.

Q. Isn't it a fact that there are two different sales there?

A. We made two purchases.

Q. Well, which one applies to the one that we have here?

The Court: Do you know of your own knowledge?
The Witness: Yes, sir, I do.

• • • • • • •

The one that is represented here is the one that was picked up and sent to us by our salesman.

The Court: And that is the second sheet?
The Witness: That is the one that was priced at $20.35.

• • • • • • •

[fol. 82] FRANK C. STOVER was called as an adverse witness by plaintiff and testified:

That he is fifty-two years of age, resides at 730 Waldon Road, Winnetka, Illinois and is head of a national buying department for Sears, Roebuck and Company, the department being that which among other things buys lamps for Sears. He held that position a little over eight years. Intimate knowledge of particular items of lamps is more under the direction of Mr. Vallette, the buyer. The department is known as Department 621 of Sears.

[fol. 83] He further testified:

• • • • • • •

Q. You were familiar with the fact that lamps of the pole type and generally as exemplified, among others, as Plaintiff's Exhibit 10, were purchased by Sears, Roebuck and Company?

A. Yes, sir.

Q. Now that originated, did it not, as a result of a memorandum which you sent to Mr. Vallette?

A. I can't say, sir, that it originated as a result of that. Mr. Vallette probably or possibly knew about their development simultaneously and was already working on them. That I couldn't say for sure.

Q. I show you a document which was marked during your deposition examination, and it comprises three sheets which were all identified as Plaintiff's Exhibit 1 of the deposition.

As I understood the matter, you sent a memorandum to Mr. Vallette dated August 8, 1956, did you not?

A. Yes, sir.

Q. In that memorandum, or attached to that memorandum was a page from a magazine.

A. Yes, sir.

Q. In the memorandum you said, "Possibly you will remember my speaking to you about a possible place for a Deca-pole type of bullet tree for use in modern houses. I see somebody has come out with such a lamp. If you are interested you could probably find out who makes it by writing to the publisher of the magazine attached," did you not?

A. Yes, sir.

Q. That was sent to Mr. Vallette?

A. Yes, sir.

[fol. 84] Q. Now, the magazine attached, at least the page to which you made reference, is attached also, and is one which apparently you received at your home.

A. Yes.

Q. And the page which you referred to, is pencilled—it has a photograph, and a comment about floor lamps with flair, does it not?

A. Yes, sir.

Q. And it refers to the very latest in lighting, baseless Lampole?

A. Yes, sir.

Q. That was the particular pole lamp which you referred to, was it not?

A. I didn't refer to any particular one, Mr. Horton, in the note.

Q. You said,—

A. The Deca-pole type. I see somebody has come out with such a lamp. "If you are interested you can probably find out who makes it."

Q. "By writing to the publisher of the magazine attached."

A. Yes.

Q. And the magazine attached, this was the sheet to which you referred?

A. Yes.

Q. And that contains only one illustration of a pole type lamp, does it not?

A. Yes.

The Court: Does it indicate whose Lampole it was?

Mr. Horton: Other than it uses the trade-mark of the Stiffel Company.

The Witness: It doesn't indicate it is a trade-mark, Mr. Horton. Pardon me.

[fol. 85] By Mr. Horton:

Q. Well, I don't want to argue with you, but it is in capital letters.

A. I didn't realize it was a trade-mark at the time.

Q. That was sent to Mr. Vallette?

A. Yes.

Q. And you received in reply to your note, this attached note of August 21, 1956, did you not?

A. Yes.

Q. In that note Mr. Vallette said to you:

"This refers to your note of August 8th, and the attached magazine showing a Deca pole bullet tree lamp. Last week while at Randolph, we worked out eleven new modern numbers, among which is a Deca pole lamp. We shopped competition and it is our opinion that we can create an attractive, as well as competitive item of this type."

That is the way you got that note from Mr. Vallette?

A. Yes.

Q. These are the copies of the papers which you produced for me, are they not?

A. Yes.

* * * * * * *

Whereupon, the memorandum of August 8, 1956, the attached magazine page and the attached note dated August 21, 1956 were respectively marked Plaintiff's Exhibits 21A, 21B and 21C and offered and received in evidence.

The witness testified further as follows:

Q. In this reply from Mr. Vallette, he does not follow your suggestion, at least of stating who makes the lamp published in the magazine, shown in the magazine. Did he ever tell you that he had ascertained who the owner was?

A. No, sir.

[fol. 86] Q. Who was Randolph?

A. Randolph Metal Works of Philadelphia, a supplier of ours.

Q. And Randolph Metal Works made lamps generally for Sears, did they not?

A. Yes.

Q. Prior to the time of your note of August 8th, 1956, Sears had not sold any of the pole lamps as exemplified by Exhibit 10, had they?

A. I am not certain of that. I think it is a reasonable assumption that they had not.

Q. Well, I thought you did agree with me that the lamp, Exhibit 10, that type of lamp was the first one which was manufactured for Sears, Roebuck?

A. No, sir, I didn't because I don't know that to be true.

The Court: I think he has answered. It is a fair assumption that it is so.

By Mr. Horton:

Q. Of these items, which were referred to by Mr. Vallette, as working out eleven new modern numbers, among which is a Deca pole lamp, only one of those was actually a pole lamp, was it not?

A. I don't know that, sir.

Q. I thought you said you did.

A. Only one of the eleven new numbers?

Q. Yes, I understood of the eleven he referred to, that there were ten other kinds of lamps, and one of the pole lamp.

A. I don't know that to be true.

Q. All right, I will ask him. After getting lamps from Randolph, they were placed in your catalog, were they not?

A. Yes, sir.

[fol. 87] Q. How do your individual stores buy the lamps? Do they get them from Sears or do they get them from the manufacturer?

A. They order them directly from the manufacturer using a separate catalog than the one that is generally known to the public.

Q. They have a store catalog?

A. A specially prepared retail list.

Q. Different than the mail order catalog?

A. Yes, sir.

Q. If it is in that catalog they know where to procure it, do they not?

A. Yes, sir.

Q. That tells them the manufacturer and the price?

A. Yes.

Q. And details about the structure to some extent?

A. Yes.

Q. Then, after you have seen the product—after it comes in you see the product, do you not?

A. Not always, no. Sometimes I do.

Q. Well, in the instance of the lamps made by Randolph, of the pole lamp type, you did see them, did you not? You saw some of them.

A. Yes, oh, yes. At one time or another.

Q. On October 13, 1959, you wrote a memorandum to Mr. Vallette, did you not?

A. Yes.

Q. Saying:

> "Not only the five sections, but the very loose fit of the bottom screw makes Randolph pole lamps very wobbly."

A. Yes.

Q. And you sent that to Mr. Vallette?

A. Yes.

[fol. 88] Q. Then you got a reply on that from Mr. Vallette,—

The Court: Wobbly, did you say?

The Witness: Yes.

By Mr. Horton:

Q. (Continuing) —dated November 18, 1959, in which he says, he refers to your note of October 13th and says:

"Randolph has been working to improve their poles," and he says what they are doing. He is going to show you a sample of that when he returns from his present trip. Is that correct?

A. Yes.

Whereupon, the memorandum of October 13, 1959 and the reply of November 18, 1959 identified by the witness were offered and received in evidence as Plaintiff's Exhibits 22-A and 22-B, respectively.

The witness further identified a letter dated June 9, 1959 received from Randolph Metal Works referring, among other things, to a tree lamp, the letter being offered and received in evidence as Plaintiff's Exhibit 23.

The witness stated that he does understand what a tree lamp is as mentioned by Mr. Stein in the letter and that it is "not a floor to ceiling lamp". The witness further testified:

Cross Examination.

Q. In asking you about your records about dealings between Sears and Randolph Metal Works, you produced relatively few documents. I think we marked six of them. There may have been a dozen altogether.

I think you told me that the records insofar as they remain in existence pertaining to that matter would be more likely had by Mr. Vallette.

A. Yes, sir. He is more intimately charged with the [fol. 89] conduct of the lamp business, the lamp part of our business.

Q. Now, you know now, do you not, that the word Lampole—that is spelled as one word with a capital "L"—is the registered trade-mark of the Stiffel Company, do you not?

A. Yes.

Q. I understand that you did not so know that it was a Stiffel trade-mark at the time you wrote this memorandum of August 8th, 1956?

A. Yes, sir. That is correct.

Q. Now, when did you first see the Stiffel Lampole product?

A. I can't place it accurately. I certainly must have seen it. I don't know, sir. I just can't—

Q. Well, I understand you to be a little vague as to which shows you went to.

A. Yes, sir.

Q. But, at least you did attend shows at the Merchandise Mart where the lamps were displayed?

A. Yes, sir.

Q. And you did, at one of those shows, go into the Stiffel showroom or booth, or whatever it was?

A. Yes.

Q. And looked at the lamps that were shown and talked to some of the people there, but I think now you aren't sure whether that was 1956 or whether it was 1957 or possibly even some other year?

A. That is correct. I am not sure.

Q. But you did regularly go to those shows?

A. Yes. There have been some seventeen since I have been on this assignment and I think I may have gone to twelve or thirteen of them. They were semi-annual shows, of course.

[fol: 90] Q. It did come to your attention that pole lamps were a hot item, so to speak?

A. Yes, sir.

Q. It was after that that Sears entered into the sale of such items as Plaintiff's Exhibit 10, specifically, isn't that true?

A. Not precisely, sir. If I may state our position a little more exactly, we watched the advent of pole lamps into the home decorating market and did not go in for them, did not carry them at first because they were used exclusively by or pretty exclusively by high style decorators.

We were watching to see if they ever became a product that would sell to a mass market and when we saw it was

moving in that direction, we moved into them before they got hot.

Q. Well, that was in the fall and winter of 1956, wasn't it?

A. I would think, from these references, it was somewhere in that time, in 1956.

Q. Now, did you have any meetings with Mr. Stein relative to the production of pole lamps for Sears?

A. I don't think so. I believe that all of that was handled by Mr. Vallette.

Q. And you did have—

A. I would normally not have meetings with Mr. Stein except on the general subject of manufacture and supply.

Q. You did meet with Mr. Stover in Philadelphia at one time, or Mr. Stein, did you not?

A. Oh, yes.

Q. And for the purpose of discussing pole lamps, perhaps, among other products?

A. I can't remember meeting in Philadelphia or anywhere else for the express purpose of discussing pole lamps, but we discuss all of our business whenever we do meet and it is quite likely that we did.

[fol. 91] Q. Well, Mr. Stein had referred to you, in a letter, about a meeting which you had with him in Philadelphia at which you had discussed retailing a Deca pole at Ward's price and still make money.

Do you remember that?

A. No, I don't remember. I am sorry.

Q. If you had that meeting, you do not recall when it was, is that true?

A. That is true.

Q. That meeting was, however, after Randolph Metal Works had started to manufacture pole lamps for Sears, was it not?

A. Well, I don't recall the meeting, but it would follow chronologically, that it would be.

Q. Just to refresh your recollection on this, I asked you, and isn't it true, I said:

> "What did you discuss with Mr. Stein at that meeting in Philadelphia?"

A. Yes.

Q. And you said:

"We discussed the effects of a larger volume production on his overhead costs and the part that making a very low price in large quantities would play on reducing the overhead costs."

A. Yes, sir.

Q. Now, that was, as you had said, relative to pole lamps in one sense in competition with Ward's, isn't that true?

A. Well, if I said it in the deposition, it is true. I don't remember it now.

Q. Well, you did make that answer, didn't you?

A. All right. O.K.

Q. And I asked you—maybe I will ask you again: Who is bearing the expense of this litigation?

[fol. 92] A. Randolph Metal Works.

Q. And has Randolph Metal Works agreed to indemnify Sears, Roeback and Company for any damages incurred?

A. Yes, sir.

Q. As I understand, it is your understanding, at least, that Randolph Metal Works is paying for the cost of the litigation, except of course, the expenses of the Sears personnel who have been involved in this case?

A. Yes, sir.

* * * * * * *

[fol. 93] ROBERT M. VALLETTE was called as an adverse witness by plaintiff and stated:

That he is fifty years old, resides at 338 South East Avenue, Oak Park, Illinois and that he is the buyer of portable lamps at Sears and has been so occupied for approximately seven years and was buyer in 1956.

He further testified:

Q. In saying you are the buyer of portable lamps, you distinguish between portable lamps and fixtures?

A. I do not buy fixtures, so-called.

Q. Electrical fixtures are in a different department than portable lamps, aren't they, at Sears?

A. That is correct.

Q. And you received this memorandum from Mr. Vallette—from Mr. Stover, excuse me, Plaintiff's Exhibit 21-C, did you not?

A. Yes, I did.

Q. Attached to that was the page from the magazine, Exhibit 21-B?

A. That is correct.

Q. Speak up so the reporter can hear you.

A. Yes.

Q. And you replied to that memorandum by this memorandum of Plaintiff's Exhibit 21-A, did you not?

A. Yes.

Q. Now, in connection with that, did you make any attempt to learn who was the manufacturer of the lamp referred to as the Lampole in the document, Plaintiff's Exhibit 21-B?

A. No.

Q. Now, Mr. Stover had suggested that you could probably find out who makes it by writing to the publisher of the magazine attached. You did not do that?

[fol. 94] A. I did not.

Q. You did, however, take this catalog sheet, or, rather, the magazine sheet and you went to Philadelphia, did you not?

A. I am not certain that I took that, because of the time. I think I may have gotten that when I came back. I am not sure. I am not sure about taking it to Philadelphia.

Q. Well, in your memorandum of August 21st, that is, it was in reply to Mr. Stover's memorandum of August 8th. It says so.

A. It is possible I could have taken it.

Q. What?

A. It is possible that I could have taken it, yes, sir.

Q. In this memorandum you say that you were at Randolph's last week. Now, that was the Randolph Metal, Inc., was it not?

A. Yes, sir.

Q. In Philadelphia?

A. That is correct.

Q. And you say that you then had a meeting and "we worked out eleven new modern members, among which is a Deca pole lamp."

Who did you mean by "we"?

A. Mr. Stein and Mr.—his partner and myself.

Q. Of those eleven members, isn't it true that just one of them was a pole lamp?

A. That is correct.

Q. Now, the pole lamp which you worked out at that time was the design which resulted in the lamps like Plaintiff's Exhibit 10, isn't that true?

A. That is correct.

Q. Now, before Sears sold the poles like Plaintiff's Exhibit 10, it had not theretofore sold any pole lamps, isn't that true?

[fol. 95] A. That is true.

Q. Now, you did attend the shows, did you not, of the lamp trade?

A. Yes.

Q. Did you not see pole lamps at the 1956 show?

A. I must have, of course.

Q. And you did go to see the Stiffel exhibit among others, did you not?

A. I am not sure whether it was the winter show or the summer show.

Q. When is the winter show?

A. In January.

Q. Of 1955, 1956, or the spring of 1956?

A. I am talking about 1956, in 1956. I am not positive.

Q. There is a winter show. That would have been when, in the early part of 1956?

A. January.

Q. Anyway, in one of those times, in 1956, you did attend that show?

A. I am quite certain I did, sir.

Q. You were aware, were you not, of the successful showing and desire, buying desire for pole lamps in the fall of 1956, weren't you?

A. Could you word that again, please, sir?

Q. Well, I say, in the fall of 1956, you had followed this market enough so that you knew that pole lamps were, as I said to Mr. Stover, a hot item. Isn't that true?

A. They were becoming interesting. That is part of it.

Q. So interesting that Sears decided to sell them, isn't that right?

A. That is correct.

Q. You went to Randolph as the first source of supply whom you approached, isn't that right?

A. That is correct.

[fol. 96] Q. Now, when you approached Randolph, Randolph was not, at that time, making any pole lamp, was it?

A. No, they were not.

Q. And the first pole lamp which they worked out or worked out with you and sold to Sears was the lamp like Exhibit 10.

A. That was the result.

Q. Now, did you, thereafter, buy pole lamps of various designs and types from Randolph Metals?

A. Yes.

Q. When did you commence to buy pole lamps from a source other than Randolph?

A. I actually wouldn't be able to give a date on that, sir. It is not in my mind as to what the date was.

Q. It was some considerable time after you had started with Randolph, was it not?

A. I just can't make a statement on that. I don't know.

Q. All right.

A. It wasn't premeditated.

Q. Now, on the lamp which you do obtain from Randolph and for Sears, you have asked that he obtain U. L. approval, haven't you?

A. On some lamps.

Q. And so far, there has not been U. L. approval on the lamp, has there?

A. There has been, sir.

Q. When did that occur?

A. I don't know the exact date of that.

* * * * * * *

Q. What is meant by "U. L."?

A. U. L. means Underwriters Laboratory approval.

Q. Now, Underwriters Laboratory is what kind of a company?

A. It is, to my knowledge, a non-profit organization setting up requirements for electrical products.

[fol. 97] Q. For safety standards?

A. Yes.

Q. For safety standards?

A. Yes.

Q. It is located in Chicago?

A. It is located all over the country.

Q. When we took your deposition, I asked you this, and you made the following answers, didn't you:

> "Q. In the complete lamps that you obtain from Randolph of the pole type, you have asked that he obtain UL approval, have you not?
>
> "A. Yes, sir. By UL you mean Underwriters Laboratories, don't you?
>
> "Q. That is right. And so far Randolph has not been able to get that approval, isn't that true?
>
> "A. No."

Didn't you make that answer and weren't you asked those questions?

A. I was asked those questions, and I am just wondering how the "no" applies there. Did they get approval or not. Let's get that straight. It depends what time you are talking about, what year.

Q. That was the time the deposition was taken, this year.

The Court: He says no. It is the same as his present testimony.

Mr. Horton: He says that they have not obtained approval.

The Witness: No.

The Court: That isn't as I got it.

By Mr. Horton:

Q. Well, what is your present testimony? Have they obtained Underwriters Laboratory approval?

A. Yes.

[fol. 98] The Court: He said they have recently.

By Mr. Horton:

Q. When did they obtain that approval?

A. I believe it was several years ago because there wasn't any approval possible before that on any pole lamp.

Q. All right. Didn't I ask you this question, and didn't you make this answer:

"Q. Many of the pole lamps which you sell and which you obtain from Randolph do not have UL approval.

"A. That is correct."

Didn't you make that answer?

A. There are some that are not UL approved, that is correct.

Q. Wasn't that answer true at the time you made it?

A. Yes.

Q. Are there some lamps made for you by Randolph that do not have Underwriters Laboratories approval?

A. That is correct.

Q. As a complete lamp?

A. That is correct.

Q. Is that true of the lamp which is marked Plaintiff's Exhibit 10?

A. No, it is not.

Q. When you were in my office, I asked you, did I not, if you knew who made that lamp, Exhibit No. 10, and you said that judging from it being in my office you thought it was made by Stiffel.

A. That is correct.

Q. And I told you it was one made by Sears, and you then looked at it and said it was made for Sears. Is that correct?

A. Yes, sir.

Q. Do you recall when the suit was filed against Sears down in Greensboro, North Carolina?

[fol. 99] A. Yes.

Q. Did you give some instructions to Randolph Metal Works at that time relative to the lamps like Exhibit 10?

A. I did.

Q. What did you tell them?

A. I believe he had an order for Greensboro and I told him not to ship it to Greensboro.

Q. Did you produce for me some letters which I marked for identification during your deposition, and one was a letter dated October 31, 1957 from Randolph Metal Works, was it not?

A. That is correct.

Q. In which he said—this was addressed to Miss Kay Stuelpnagel and she is in your department at Sears, is she not?

A. Yes.

Q. In that, Mr. Stein said, "As per phone conversation we have cancelled two No. 7060 on purchase order number, for Greensboro." Is that correct?

A. That is correct.

Whereupon the letter of October 31, 1957, was offered and received in evidence as Plaintiff's Exhibit 24.

The witness stated that shipment of the lamps like Exhibit 10 was discontinued as to the Greensboro store only on the day of the letter Plaintiff's Exhibit 24 and that, shortly after that, defendant discontinued shipment of that number to its retail stores. Eventually, Sears asked Randolph Metal Works to remove the handle and by that meant removing the walnut handle or wooden handle on each lamp shade. The letter of October 31, 1957 from Mr. Stein of Randolph Metal Works to Sears was produced, in which Mr. Stein stated:

> "As per phone conversation had with you today, we [fol. 100] are eliminating the walnut handles on No. 7060, our 724 Deca poles for retail only, to take effect at once. The bullets that we have on hand with the two holes to insert the handles will be plugged with a metal cap * * *. We will continue to ship the 7060 for the fall general catalog with the walnut handles. However, these handles will be eliminated for the 1958 spring general catalog at which time No. 7095 will be assigned."

Such changes to be made were in accordance with Mr. Vallette's understanding. The witness further stated that after the suit had been filed, further shipment of the lamp with the handles, wooden handles on to Greensboro, was discontinued. Shipment, however, was continued to other places, and until the 1958 general catalog would be made up and distributed. The witness stated that he believed the handles were discontinued in shipments to the retail stores right away.

The letter from Mr. Stein dated October 31, 1957 was offered and received in evidence as Plaintiff's Exhibit 25.

What happened was that Mr. Stein did immediately stop shipment of the No. 7060 lamp like Plaintiff's Exhibit 10 to Greensboro with the walnut handles and sometime after that he discontinued shipment of such lamps with the walnut handles to retail stores. He continued to ship them for catalog orders until the change would be made in the 1958 catalog. As to those from which the wooden handles were removed, brass plugs were placed in the shade to fill up the holes where the handle attachment appeared. That was the only change that was made in the No. 7060 lamp at that time. The lamp No. 7095 assigned for the 1958 general catalog was the same pole lamp exactly as the No. 7060 with the exception that it did not have the handle on the [fol. 101] shade. The witness stated that he from time to time ordered lamps directly from Randolph and directed that they be sent to various locations. He produced a copy of a Memorandum dated February 16, 1959 asking Randolph Metals to send samples of a list of lamps to Roller Lamp Company in Los Angeles. He wanted the samples to be sent to Roller Lamp Company so that it could duplicate particularly for the West Coast area the lamps which were being made for Sears by Randolph. That list included some lamps which were not pole lamps and also included a number of pole lamps listed and referred to in the Memorandum.

Whereupon, the Memorandum of February 16, 1959 was offered and received in evidence as Plaintiff's Exhibit 26.

The witness further testified that on November 19, 1958, he sent an order of similar type to Randolph but asking

that certain samples be sent to various stores of defendant at a number of locations in the United States and that he there asked that they send a sample of "our low end pole, Stock No. 74000." By "low end" he referred to the price points as they spoke of "low end, middle, or high price points on a given line of products."

As to whether such would refer to a low price or the lowest price or in the low end area, he stated that it referred to "a low end area price point" and the number 74000 was a stock number of a pole in that area. That was an area below the price at which the No. 7060 (Plaintiff's Exhibit 10) was sold.

Whereupon, the Memorandum of November 19, 1958 was offered and received in evidence as Plaintiff's Exhibit 27.

Q. At that time that you worked there with Mr. Stein to work out the first pole lamp sold by Sears, No. 7060, which is exemplified by Plaintiff's Exhibit No. 10, what did you have to show Mr. Stein as to the style and design which you wanted for Sears?

[fol. 102] A. We just talked Deca pole lamps because we knew what they were. To my knowledge I didn't show him anything.

Q. You did not at that time have a Stiffel lamp?

A. No, sir.

Q. Did you show him this page which you had received from Mr. Stover?

A. I don't believe I did. It is possible, however, that I did; I don't remember.

Q. Did you call his attention to the lamps shown by Stiffel at the 1956 show?

A. We didn't talk about any particular pole lamp at the time. We just talked about pole lamps, Deca pole lamps.

Q. You like, I know, to talk about Deca pole lamps.

A. Pole lamps.

Q. But, you also do generally refer to those as pole lamps also without using the word Deca, don't you?

A. We use both terms.

Q. You sometimes say Deca pole and sometimes you say pole lamp, don't you?

A. We use both terms.

Q. You do not distinguish, so far as structure is concerned. This lamp, Plaintiff's Exhibit 10, now isn't that a pole lamp? Don't you so understand it?

A. It is a pole lamp, yes.

Q. And you sometimes so refer to it, do you not?

A. We do.

Q. And sometimes you refer to it as Deca pole lamp?

A. That is correct.

Q. When you do that you are still talking about the same lamp?

A. That is right.

Q. When you saw the first sample of the pole lamp, or the Deca pole, I don't care what you call it, Exhibit 10, [fol. 103] that was produced for you by Randolph, did you then know what the Stiffel poles were?

A. I had seen them, yes, sir.

Q. At the time you got that sample from Randolph did you look at this memorandum again and the photograph shown in the magazine page?

A. No, I didn't.

Q. It did not occur to you to look to see whether that was the same or not?

A. No, I didn't.

* * * * * * *

In response to question by the court, the witness stated that as to Randolph Metal Company agreeing to "underwrite this litigation," such agreement "is on our purchase orders * * * On every purchase order * * * in '56 * * * *" on all Sears' work. He stated that Randolph Metal Works underwrites Sears being held immune of any expenditures for litigation of this kind and there was no specific agreement with respect to this particular item.

The witness stated that the defendant procures lamp poles from other companies than Randolph Metal, including Universal Electric Log Company in Chicago, Richards Manufacturing Company in Los Angeles, Roller Lamp Company in Los Angeles, and Sheridan Industries in New York. As to each of such companies, Sears started buying lamps from them after it had been buying lamps from Randolph. Sheridan Industries and every source sells lamps

to Sears on a purchase order containing the same indemnification agreement as is true with respect to Randolph Metal Works. In each instance as to pole lamps purchased from these other sources of supply than Randolph, the manufacturers have agreed to hold Sears harmless for their production. Randolph has not agreed to hold Sears harm-
[fol. 104] less for instance for lamps manufactured for Sears by Roller Lamp Company. That would be a burden of Roller and the same is true with respect to the other companies. The witness testified that on January 3, 1958, he advised Mr. Stein that at that time Sears was discontinuing the model 7060 and would replace it with the model 7095. Attached to the letter of January 3, 1958 containing such notice is a letter from Randolph Metal Works dated January 15, 1958 acknowledging discontinuance of the No. 7060 to be replaced by the No. 7095. In that letter, Mr. Stein stated that:

> "We are putting buttons on the holes that were formerly used for handles."

The No. 7095 was the same as the No. 7060 except that the handle is removed and buttons replaced in those holes.

Whereupon, the letter to Mr. Stein of January 3, 1958 was offered and received in evidence as Plaintiff's Exhibit 28-A and the letter in reply thereto of January 15, 1958 was offered and received in evidence as Plaintiff's Exhibit 28-B.

The witness stated that the first time Sears illustrated the pole lamp in its catalog was in the fall of 1957.

HARRY S. STEIN was called as a witness by the plaintiff:

Objection to calling him as an adverse witness was sustained.

Mr. Stein testified that he resides at 236 Stacey Road, Penn Valley, Norberth Post Office, Pennsylvania, that his age is forty-three and that he is president of Randolph Metal Works, Inc., of Philadelphia, which company has
[fol. 105] been in business for approximately fifteen years.

The witness stated that he is a C.P.A. and a graduate of the Wharton School of the University of Pennsylvania.

While he was in school, he started at the predecessor of the present Randolph Metal Works which was a partnership at that time, his partner being Mr. Terrnova. That business was commenced in about 1944 and was subsequently incorporated and is now a corporation. Mr. Stein and Mr. Terrnova are substantially the owners of that company. The company had been making lamps for the Sears Company prior to August, 1956 and in August of 1956, Mr. Vallette came to the Randolph place of business in Philadelphia to talk about lamps. To the best of the witness's recollection, he probably talked about pole lamps at that time. Prior to that meeting, Randolph Metal Works had not manufactured pole lamps but, after the meeting, it then made up some pole lamps for submission to Sears.

The witness identified Plaintiff's Exhibit 10 as a product of Randolph Metal Works and stated that the first sample lamp of that design was made by Randolph in the latter part of 1956 and it was a sample of that character made for Sears. It had not previously made any pole lamps for Sears. The lamp Plaintiff's Exhibit 10 was illustrated in Sears' catalog starting in 1957.

Q. Now, at the time that that lamp was made up for you, a sample for Sears, what did you have before you—any illustration or example of a Stiffel pole?

A. No, sir.

Q. That it was like or had characteristics like Exhibit 3 was just happenstance?

A. I beg your pardon?

Q. That was just happenstance, that is, the fact that it looks like Exhibit 3, this other pole was just a matter of happenstance?

[fol. 106] A. No, sir.

Q. Did you have any Stiffel literature or had you seen a Stiffel lamp pole at the time you made up the sample for Plaintiff's Exhibit 10?

A. No, sir. The poles were on the market, sir.

Q. Stiffel poles?

A. Other poles; not Stiffel.

Q. Well, did you order another pole that was a sample?

A. No, sir, but, that was a standard part on the market, the pole itself.

Q. Oh, no. Now, you are not telling me that there was a lamp like Plaintiff's Exhibit 10 that was a standard on the market other than as made by Stiffel?

Mr. Freeman: I am going to object to that question as strictly argumentative. He shouldn't argue with the witness.

Mr. Horton: We have a right to—

The Court: He may answer. He has the right to go into it. Can you recall any company, any company's label or name in any one of these lamp poles that you are referring to?

The Witness: I think Argo were the ones that were on the market at the time. I am not sure.

By Mr. Horton:

Q. Did you have an Argo lamp before you at the time you made up the design in Plaintiff's Exhibit 10?

A. No, I did not have an order, but, I have seen them. I have seen lamps that I thought were Argo, I am not sure. But I have seen them.

Q. Do you know whether they were Stiffel's or not?

A. No, I wouldn't know.

The Court: When was it?

The Witness: I would say the end of 1956.

Q. That was when you saw this lamp and you don't know whether it was Argo's or someone else's?

[fol. 107] A. I have seen many of them, not just one—I have seen different designs.

Q. That was when you first saw it?

A. Yes.

Q. Near the end of 1956?

A. I would say approximately, yes.

The Court: Can you think of any other name?

The Witness: Offhand, I wouldn't know, because most of these lamps do not have labels on them and I wouldn't be able to identify them.

The Court: You don't know of any other lamp?
The Witness: I can't think of any offhand.

By Mr. Horton:

Q. In 1957, were you aware at the time that suit was filed against Sears by the Stiffel Company?
A. Yes.
Q. That was brought to your attention?
A. Yes, sir.
Q. You made some change in lamps, particularly that were sent to Greensboro at that time, did you not?
A. Sent to Greensboro?
Q. Yes.
A. Not particularly Greensboro. I think it was throughout the country. In other words, we didn't single out Greensboro, if that is what you mean.

* * * * * * *

Q. On October 31, 1957, you had a telephone conversation with Miss Stuelpnagel of Sears, Roebuck Company, did you not?
A. I assume I did, if that is what the letter says.
Q. You told her that you were cancelling a purchase order on Lamp No. 7060 for Greensboro?
A. Yes, sir.
Q. At that time?
[fol. 108] A. Yes, sir.
Q. Now, on the same day, you wrote a letter to Miss Stuelpnagel, on October 31, 1957, and said that you were eliminating the walnut handles on the 7060 lamp for retail only?
A. Yes.
Q. Is that right?
A. For the entire chain, yes.
Q. For retail only, though?
A. Yes, sir. That's right.
Q. You did not, at that time, make any change of the walnut handle on the lamp for the mail orders, did you?
A. No, sir, because the fall journal was just about expired at that time.

Q. You were not going to make that change until the 1958 catalog came out, is that true?

A. Yes, but so far as we are concerned, that comes out in 1957. The 1958 book, so far as the orders are concerned, comes out in 1957. We received orders about a month after this letter.

Q. That would be in November?

A. Approximately, yes.

Q. Did you not ship 7060 lamps with handles on them after November of 1957?

A. We might have shipped some, yes.

Q. And when the spring catalogs for 1958 came out, you eliminated, there was eliminated from that catalog the illustration of the No. 7060, wasn't there?

A. Yes, sir.

Q. There was substituted a cut of the Model No. 7095, wasn't there?

A. Yes, sir.

Q. Now, the 7095 was exactly the same as the 7060 without the handle on the mantle, isn't that right?

A. Yes, sir.

[fol. 109] Q. Now, at the time of your deposition, you told me that Mr. Freeman was your attorney, did you not?

A. Yes, sir.

Q. That he was representing you?

A. Yes, sir.

Q. You told me, did you not, that your company was paying for the defense of this litigation?

A. Yes, sir.

Q. Now, at the time of your original meeting with Mr. Vallette to work out the design of the first pole lamps which you manufactured for Sears, were there any papers or documents which passed between you or which were made up at that time?

A. Not to my recollection.

Q. You told me that if you had any, such records and papers had all been destroyed, isn't that correct?

A. Yes, sir.

Q. I think you told me that you had destroyed substantially all the papers, at least up until the suit was commenced. Isn't that correct?

A. Yes. I told you that general correspondence, we had destroyed those; in all the years we had been in business, we had never been sued or had sued anyone and we felt there was just no need to keep it. We didn't know there was any importance attached to correspondence in connection with this trial.

Q. You said also that the correspondence and records for the year 1957 had been destroyed?

A. Yes, sir.

Q. Now, that, of course, included a period after the suit was commenced, didn't it?

A. What we did retain, sir, were the papers we thought were directly connected with the Stiffel matter. Those were retained.

Q. But there were no papers?

[fol. 110] A. Just general correspondence, no.

Q. There were no drawings or preliminary drawings or design papers of any kind relating to the makeup of the first pole lamp for Sears?

A. No, sir, because, in those days we operated on a very informal basis.

Q. Now, during the taking of your deposition the following occurred and I want to know whether you disagree with it in any way.

Mr. Freeman said:

"Mr. Horton, I just want to say that this witness has conceded that in so far as his company is concerned they pay all the expense of the suit."

"So far as you are concerned, Mr. Stein's company is in effect, in control of the suit."

Is that so?

A. Absolutely correct.

Mr. Horton: I submit that he is an adverse witness and that I have the proper right to cross-examine.

The Court: I have no objection.

Mr. Freeman: I am not going to object, because all we want to do is get the facts before the Court. He is not a party to this suit.

Mr. Horton: He is in control of it.

By Mr. Horton:

Q. Now, starting in 1956—well, whenever you first made the pole lamp and thereafter, the pole lamps became a large part of your business, did they not?

A. An important part, yes.

Q. It still is a large part of your business?

A. Yes.

Q. You said, as I recall, that you have sold to some other people than Sears but that represents a minor part of your business?

[fol. 111] A. Sold what, sir?

Q. Pole lamps.

A. We have sold pole lamps to other people, yes.

Q. But it represents a minor part of your business, isn't that true?

A. So far as poles, yes, I would say so.

Q. Substantially, your production of pole lamps has been for Sears, Roebuck and Company?

A. A good portion of it, yes.

* * * * * * *

[fol. 128] CHARLES F. VOYTECH, called as a witness on behalf of plaintiff, testified as follows:

He stated his age is fifty-one, that he resides at 2906 Sheridan Road, Chicago, and that his occupation is patent lawyer. He stated that since 1930 he had been engaged in patent work, that is, in the preparation and prosecution of patent applications, in making searches and in making determinations of validity and infringement. He has also participated in litigation. That has been an activity of his continuously since 1930. He was admitted to practice in the Patent Office in 1933, is admitted to practice law and was admitted in the State of Illinois in 1941.

[fol. 129] Mr. Freeman:

"Your Honor, I will concede that he is an expert qualified to talk about patents."

The witness stated that his offices are at 208 South La Salle Street and the same suite as Horton, Davis & McCaleb, but he is not employed by that firm. He stated

that he has examined the Stiffel patents in suit and then testified as follows:

As to the design patent 180,251, the claim is for the ornamental design shown, generally referring to the figure in the design patent.

The test of infringement of a design patent, as I understand it, is whether the accused device substantially resembles the patented device. In other words, where the one would be substantially taken to be the same as the other.

Considering the structure Plaintiff's Exhibit 10 and comparing it with my understanding of the claim of the design patent, I would say that it is substantially identical with the design shown in the design patent.

Similarly considering the structure Plaintiff's Exhibit 3, it is in my opinion substantially identical with the design shown in the design patent in suit.

* * * * * * *

[fol. 339]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

FINDINGS OF FACT AND CONCLUSIONS OF LAW—
January 22, 1962

This matter having been fully tried before the Court, and the Court having read the pleadings filed herein by the respective parties, and the Court having heard and examined all the testimony, documents and exhibits presented by the respective parties and admitted into evidence, and the Court having read, heard and considered the briefs, memoranda and oral arguments submitted by counsel in support of their respective positions, and the Court being fully advised, the Court hereby enters its Findings of Fact and Conclusions of Law as follows:

I. Introductory.

1. This is an action for patent infringement and unfair competition brought by The Stiffel Company, an Illinois corporation, having its principal place of business in Chicago, Illinois, against Sears, Roebuck and Co., a New York

corporation, having its principal place of business in Chicago, Illinois. The defendant also filed a counterclaim for declaratory judgment that the patents involved are invalid and not infringed.

2. Plaintiff is a manufacturer of high-quality portable lamps and Theophile A. Stiffel, its president has been in the lamp business for more than forty years.

3. Plaintiff is the owner by assignment of U. S. Patent No. 2,793,286 for "Lighting Fixtures", issued May 21, 1957 to Theophile Stiffel on a patent application filed January 30, 1956, and containing six claims, and of U. S. Designs Patent No. 180,251 for "Lighting Fixtures", issued May 7, 1957 to Theophile A. Stiffel on a patent application filed [fol. 340] August 22, 1956, and containing a single claim.

4. Plaintiff commenced this suit in the United States District Court for the Middle District of North Carolina, Civil Action No. C-172-T-57, filed October 17, 1957, for alleged infringement of each patent and for alleged unfair competition. The action was removed to this district for trial.

5. Plaintiff alleges infringement of all six claims of Patent No. 2,793,286 and of the single claim of Design Patent No. 180,251, by defendant's lamp models identified as Plaintiff's Exhibits 10, and 29-35, and Defendant's Exhibits 6 and 8.

6. Plaintiff alleges unfair competition in the manufacture and sale by defendant of lamps represented by Plaintiff's Exhibit 10, which are also charged to infringe the patents.

7. Plaintiff proved no earlier date of invention for either patent than the filing date of its application for Patent No. 2,793,286, filed January 30, 1956.

II. Patent Infringement Issues.

(a) Validity of Patent No. 2,793,286.

8. Patent No. 2,793,286 in Claim 1 essentially claims a plurality of sections detachably joined to form a pole which engages floor and ceiling surfaces at its ends, one section

being substantially hollow, a lighting fixture (lamp) mounted on the hollow section, electrical conductors inside the hollow section connected to the lighting fixture, and a spring-urged abutment member extending from one section to engage one of the surfaces and support the pole under compression between the surfaces. Claims 2-6 add details to the construction of Claim 1.

9. Prior to January 30, 1956, and also more than one [fol. 341] year prior thereto, Deca Pole lighting fixtures were made, publicly used, offered for sale, and sold, and were disclosed in printed publications, commencing in 1950.

10. The prior Deca Pole lighting fixtures included all of the essentials elements of the claims of Patent No. 2,793-286. They were constructed of a Deca Pole, which included, inter alia, plural hollow sections detachably joined to form a pole which engages floor and ceiling surfaces at its ends. A spring-urged abutment member extended from one section to engage one of the surfaces and support the pole under compression between the surfaces. The lighting fixtures included one or more lighting fixtures (lamps) mounted on the pole, and they were wired in various ways as suitable for the intended use.

11. The Deca Pole did not employ an adjustable leg as recited in Claim 6 of Patent No. 2,793,286. However, the Deca Pole included a plurality of sections of various lengths for adjusting the height of the pole, which were the equivalent of an adjustable leg. Moreover, adjustable legs for floor-to-ceiling poles were old in the art, as exemplified by:

(a) The S. J. Miller "Lamp Tree" threaded bottom for wedging the pole in place.

(b) Miller U. S. Patent No. 953,425, adjustable threaded leg 5 (figure 6).

(c) Hermant French Patent No. 930,073, adjustable leg 1.

(d) Blisult British Patent No. 242,551, adjustable leg c.

12. In 1953, a Deca Pole lighting fixture, Defendant's Exhibit 55, was assembled by defendant Sears and mounted over the Sears Administration Building entrance to light properly the Christmas Nativity Scene. It was also used to light the Nativity Scene for the Christmas of 1954, and it was used with the Red Cross and Community Fund dis- [fol. 342] plays. It was used where people could see it. This lighting fixture was in storage since 1955, when it was replaced in use by a Deca Pole fixture having one light.

13. The Deca Pole lighting fixture, Defendant's Exhibit 55, was constructed of a standard Deca Pole and three vertically spaced swivel lamps mounted on individual pole "modules" or sections. The modules were rotatable around the axis of the pole for 360°, so that the lamps could be arranged to point in any desired direction. The wires from the lamp sockets extended through swivel joints into the pole, so that no wire was visible. The several wires were joined together within the pole and connected to an electrical conductor which extended down through the pole and out through an opening at the base of the pole. This conductor terminated outside the pole in an electrical plug, for connection to a source of electrical current.

14. Other prior Deca Pole lighting fixtures included:

(a) Deca Poles having a lamp thereon wired through the pole, with concealed wiring except for the cord leading from the base of the pole to an electrical outlet, as testified by Mr. John G. Doran who designed the Deca Pole.

(b) Deca Poles having swivel head gooseneck lamps clamped thereon, with the wire from the lamp extending into the pole through a hole drilled near the lamp. The wire extended within the pole to the base of the pole, and the wire came out at the base and extended to a source of electrical current.

(c) A Deca Pole with an insert module type swivel head lighting unit thereon, having a small size lamp shade. The wire from the lamp extended

through the module from front to back and then extended externally of the pole.

(d) Deca Poles including an "outlet and grounding attachment", SR-50, which included a triple re- [fol. 343] ceptacle and electrical cord leading from the outlet within the pole to the base thereof, and then out the base of the pole to a source of electrical current. A gooseneck swivel head lamp was clamped on the pole, and the electrical cord from the lamp was plugged into the outlet.

(e) A Deca Pole including an "outlet and grounding attachment" was employed with a standard male plug-socket inserted into the outlet and with a light inserted in the socket. The light then came from the pole with no visible wiring, except for the cord at the base of the pole.

15. Prior publications disclosing Deca Pole lighting fixtures include:

(a) "Display World", May 1950, page 18, and "Display World", July 1950, pages 16, 17 and 52, disclosing the Deca Pole employed with electric lamps mounted on the pole with the electric wires concealed within the pole.

(b) Reprint of "Display World", July 1950, pages 16, 17 and 52.

(c) Booklet "Visual Selling", No. 414, January 1952, published by Sears Department 730.

(d) Insert in Booklet 414, "Deca Pole Outlet and Grounding Attachment", April 1954.

(e) Garrison Wagner Co. Broadside No. 40, 1953.

16. Other prior art disclosing pole lamps includes:

(a) Mermant French Patent No. 930,073.

(b) Miller U. S. Patent No. 953,425.

17. The U. S. Patent Office did not cite Deca Pole or Deca Pole lighting fixture prior art in the file of Patent No. 2,793,286. The Patent Office also did not cite Hermant French Patent No. 930,073; Bliault British Patent No. 242,551; or "Lamp Tree" prior art.

[fol. 344] (b) Validity of Design Patent No. 180,251.

18. The Design Patent No. 180,251, has a single claim for "The ornamental design for a lighting fixture, as shown." The design shown includes three vertically spaced lamps alternating on opposite sides of a pole. Reduced diameter rods protrude from the ends of the pole. The lamp shades are conical. An elongated handle is mounted on each shade, extending along the side parallel thereto. No wiring of any kind is visible.

19. The Design Patent No. 180,251, issued on a Design Patent Application No. 42,700, filed August 22, 1956. Also on August 22, 1956, plaintiff's assignor, Theophile A. Stiffel, filed a second Design Patent Application No. 42,701 on a lighting fixture which differs from the design of the patent in having two diametrically opposed lamps instead of three staggered lamps. Mr. Stiffel was required by the Patent Office to elect which design would be patented, and he elected Serial No. 42,700 and abandoned Serial No. 42,701.

20. During the prosecution of the design applications and before abandoning Application No. 42,701, the applicant offered to abandon one of the two applications if the Patent Office Examiner would approve a showing of the shades in dotted lines, or the omission of the shades, so that the patent would claim a pole alone. This offer was not accepted by the Patent Office, but the applicant abandoned Application No. 42,701 and accepted a patent only on Application No. 42,700, which is Design Patent No. 180,251 with the lamp shades and lamp handles included in the design as shown.

21. The Deca Pole lighting fixture, Defendant's Exhibit 55, does not differ essentially in ornamental design aspects from Design Patent No. 180,251.

22. The contracted ends of the pole of the design patent [fol. 345] do not lend patentable novelty to the over-all design over and above Defendant's Exhibit 55.

23. It does not raise to the dignity of design invention to narrow or contract the ends of the pole of the Stiffel lighting fixture in view of the pole of uniform cross-section throughout its length as found in Defendant's Exhibit 55.

24. The difference between the design of the Stiffel design patent and that of Defendant's Exhibit 55, namely, the provision of contracted ends for the pole, does not change the over-all eye appeal of the design patent sufficiently from that of Defendant's Exhibit 55 to constitute the degree of inventive innovation necessary to justify the grant of a valid design patent.

25. Prior to January 30, 1956, and more than one year prior to the filing date of the application for the design patent filed August 22, 1956, a "Lamp Tree" (or "Light Tree") designed by S. J. Miller was disclosed in the following printed publications:

(a) "Quick," January 30, 1960, page 42.

(b) "Lighting and Lamps," February 1950, pages 80, 81.

(c) "The New York Times Magazine", February 12, 1950, pages 38, 39.

(d) "Architectural Forum", June 1950, page 212.

(e) "The New York Times Magazine", August 22, 1954, pages 36, 37.

Each of said publications constitutes a statutory bar against the issue of a valid design patent giving plaintiff a statutory monopoly.

26. The contracted ends of the pole of the design patent do not lend patentable novelty to the over-all design over and above the disclosures of the S. J. Miller "Lamp Tree" in each of the printed publications listed in Finding 25 above.

[fol. 346] 27. It does not rise to the dignity of design invention to narrow or contract the ends of the pole of the Stiffel lighting fixture in view of the pole of uniform cross-section throughout its length as found in each of the above printed publications.

28. The difference between the design of the Stiffel design patent and that of the S. J. Miller "Lamp Tree" as disclosed in each of the above printed publications, namely, the provision of the contracted ends for the pole, does not change the over-all eye appeal of the design patent sufficiently from that of the "Lamp Tree" to constitute the degree of inventive innovation necessary to justify the grant of a design patent.

29. The "Lamp Tree" is a floor-to-ceiling tabular pole having three lamps grouped thereon in the same way as the Design Patent No. 180,251. The "Lamp Tree" also includes a fourth lamp and a circular table mounted on the pole. The "Lamp Tree" does not differ essentially in ornamental design aspects from Design Patent No. 180,251.

30. No Deca Pole lighting fixture, "Lamp Tree" or other "floor-to-ceiling" lamp tree disclosures was cited by the Patent Office in the file of Design Patent No. 180,251.

31. The bottom rod on the pole of Design Patent No. 180,251 is narrow so that it will screw into the pole for adjustment. The top plunger rod is narrow so that it will move within the pole. Neither of these features is intended solely for the purposes of design appearance. They are utilitarian adaption of the prior art.

32. A narrow end rod on a wider tubular pole is disclosed in the Reichert U. S. Patent No. 1,137,900. The Reichert pole is a floor-to-ceiling pole, and the narrow upper end moves within the pole to accommodate various floor-to-ceiling heights. To provide both ends of a pole with a narrow rod extending into a wider tubular pole is a [fol. 347] well-known mechanical expedient within the skill of a routine designer or mechanic and is not invention.

33. Conical lamp shades like those in Design Patent No. 180,251 were disclosed in the prior "the 1954 Allegheny

Line," item 2074. Sears catalogs for 1951, 1954 and 1955 likewise show conical lamp shades as being in the prior art and public domain so that Stiffel is not entitled to preclude others from their free use on poles for lighting purposes.

(c) The Infringement Issue.

34. Defendant's accused lamps embody the structure and functions of the prior Deca Pole lighting fixtures and obvious variations thereof.

35. Defendant's accused lamps present the essential ornamental appearance of the prior "Lamp Tree" and the Deca Pole lighting fixture, defendant's Exhibit 55, and obvious variations thereof.

36. Defendant's accused lamps do in fact read upon the claims, embody the structure and functions, and present the essential ornamental appearance of the plaintiff's patents here in issue and plaintiff's physical embodiments of those patents.

37. Were plaintiff's patent claims valid as invention over the prior art, defendant's pole lamps identified as plaintiff's exhibits 10, 29-35 inclusive, and defendant's exhibits 6 and 8, would have infringed some or all of those claims.

38. Were plaintiff's patent claims valid as invention over the prior art, defendant would have infringed both of the patents in suit by its sale of the pole lamps identified in Finding 37 herein, and by its actions in inducing Randolph Metal Works, Inc., to manufacture the said pole lamp structures.

[fol. 348] III. Unfair Competition Issues.

39. Defendant has had actual knowledge of plaintiff's lamp products since early in 1956 before it sold any pole lamps.

40. When the defendant decided to sell pole lamps in 1956, it made a substantially exact copy of the Stiffel

product, Plaintiff's Exhibit 3. Defendant did not copy any of the prior art structures which were offered in evidence.

41. Defendant induced Randolph Metal Works, Inc. to make the pole lamps charged to infringe and sought it out for that purpose. The Randolph company had not theretofore made pole lamps.

42. The pole lamp of defendant, plaintiff's Exhibit 10, is so closely similar to Plaintiff's Exhibit 3, plaintiff's product, as to be scarcely indistinguishable therefrom both in appearance and in functional details. The similarity is so close that confusion between them is likely, and some confusion has already occurred.

43. Defendant knowingly copied plaintiff's products when it had made for it and sold the pole lamps exemplified by Plaintiff's Exhibit 10.

44. Defendant continued to have made for it and to sell pole lamps as exemplified in Plaintiff's Exhibit 10, copying in detail plaintiff's pole lamp, Plaintiff's Exhibit 3, even after this action was filed.

[fol. 349] CONCLUSIONS OF LAW.

1. The Court has jurisdiction of the parties and of the subject matter of the issues here involved.

2. U. S. Patent No. 2,793,286, and each claim thereof, is invalid by reason of each of the following:

(a) Description of a "Deca Pole" lighting fixture in the printed publications "Display World", May 1950, page 18, and "Display World", July 1950, pages 16, 17 and 52, before the invention by the patentee of the claimed invention, and also more than one year prior to the date of the application for the patent;

(b) Public use in this country of "Deca Pole" lighting fixtures by defendant Sears, before the invention by the patentee of the claimed invention, and also more than one year prior to the date of the application for patent;

(c) Public use in this country of a "Deca Pole" lighting fixture, Defendant's Exhibit 55 by defendant Sears, before the invention by the patentee of the claimed invention, and also more than one year prior to the date of the application for the patent;

(d) Description of "Deca Pole" lighting fixtures in the printed publication "Visual Selling", Bulletin 414, January 1952, published by defendant Sears, before the invention by the patentee of the claimed invention, and also more than one year prior to the date of the application for the patent;

(e) Description of a "Deca Pole" lighting fixture in the printed publication "Deca Pole Outlet and Grounding Attachment," insert in Bulletin 414, April 1954, published by defendant Sears, before the invention by the patentee of the claimed invention, and also more than one year prior to the date of the application for the patent.

The patent is anticipated by and lacks invention over each of the foregoing, and each constitutes a statutory bar [fol. 350] to the grant of a valid patent under Title 35, U. S. Code, Sections 102 and 282.

3. U. S. Design Patent No. 180,251, and the single claim thereof, is invalid by reason of each of the following:

(a) Public use in this country of a "Deca Pole" lighting fixture Defendant's Exhibit 55 by the defendant Sears, before the invention by the patentee of the claimed invention, and also more than one

year prior to the date of the application for the patent;

(b) Description of a "Lamp Tree" lighting fixture in the following printed publications, before the invention by the patentee of the claimed invention, and also more than one year prior to the date of the application for the patent:

(1) "Quick" magazine, January 30, 1950, page 42;

(2) "Lighting & Lamps" magazine, February 1950, pages 80 and 81;

(3) "The New York Times Magazine", February 12, 1950, pages 38 and 39;

(4) "Architectural Forum" magazine, June 1950, page 212;

(5) "The New York Times Magazine", August 22, 1954, page 36.

The patent is anticipated by and lacks invention over each of the foregoing disclosures (a) and (b), and each constitutes a statutory bar to the grant of a valid design patent under Title 35, U. S. Code Sections 102, 171 and 282.

4. Each of defendant's constructions of which plaintiff complains reads upon the claims of one or both of plaintiff's patents and each would constitute an infringement of one or the other of said patents if both patents were valid.

5. Defendant's sale of pole lamps like Plaintiff's Exhibit 10 has amounted to unfair competition with plaintiff.

[fol. 351] 6. Plaintiff is entitled to an injunction to restrain further unfair competition by defendant with respect to pole lamps identical to or confusingly similar to Plaintiff's Exhibits 3 and 10.

7. Plaintiff is entitled to an accounting to determine the amount and extent of defendant's unfair competition, and the profits and damages resulting therefrom.

8. Defendant is entitled to a judgment dismissing the charge of patent infringement on its merits.

9. Defendant is entitled to a declaratory judgment on its counterclaim that patents number 2,793,286 and Design 180,251 are invalid.

Julius H. Miner,
Judge.

Dated: Jan. 22, 1962.

[fol. 352] IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

JUDGMENT—January 22, 1962

This matter coming on for entry of final judgment on the issues of patent infringement and unfair competition, and the Court having entered its Findings of Fact and Conclusions of Law, and the Court being fully advised,

It Is Hereby Ordered, Adjudged and Decreed, as follows:

1. The claims of U. S. Patent No. 2,793,286 are hereby declared to be invalid.

2. The claim of U. S. Patent No. 180,251 is hereby declared to be invalid.

3. Defendant and its agents, representatives and employees, are hereby enjoined from unfairly competing with plaintiff by selling or attempting to sell pole lamps identical to or confusingly similar to plaintiff's exhibits 3 and 10.

4. The plaintiff's complaint, insofar as it charges patent infringement, is dismissed on its merits.

5. The defendant's counterclaim, insofar as it seeks a declaratory judgment of invalidity of Patent No. 2,793,286 and Design Patent No. 180,251, is granted.

6. An accounting shall be taken concerning the amount and extent of defendant's unfair competition, and the profits and damages resulting therefrom.

7. Proceedings to take the accounting decreed in paragraph 6 of this Judgment shall be continued generally pending disposition of such other matters and proceedings as the parties may present or institute concerning the provisions of this Judgment.

Enter:

Julius H. Miner,
Judge.

Dated: Jan. 22, 1962.

[fol. 379]

IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

PLAINTIFF'S EXHIBIT 2

(See opposite)

United States Patent Office

Des. 180,251
Patented May 7, 1957

180,251

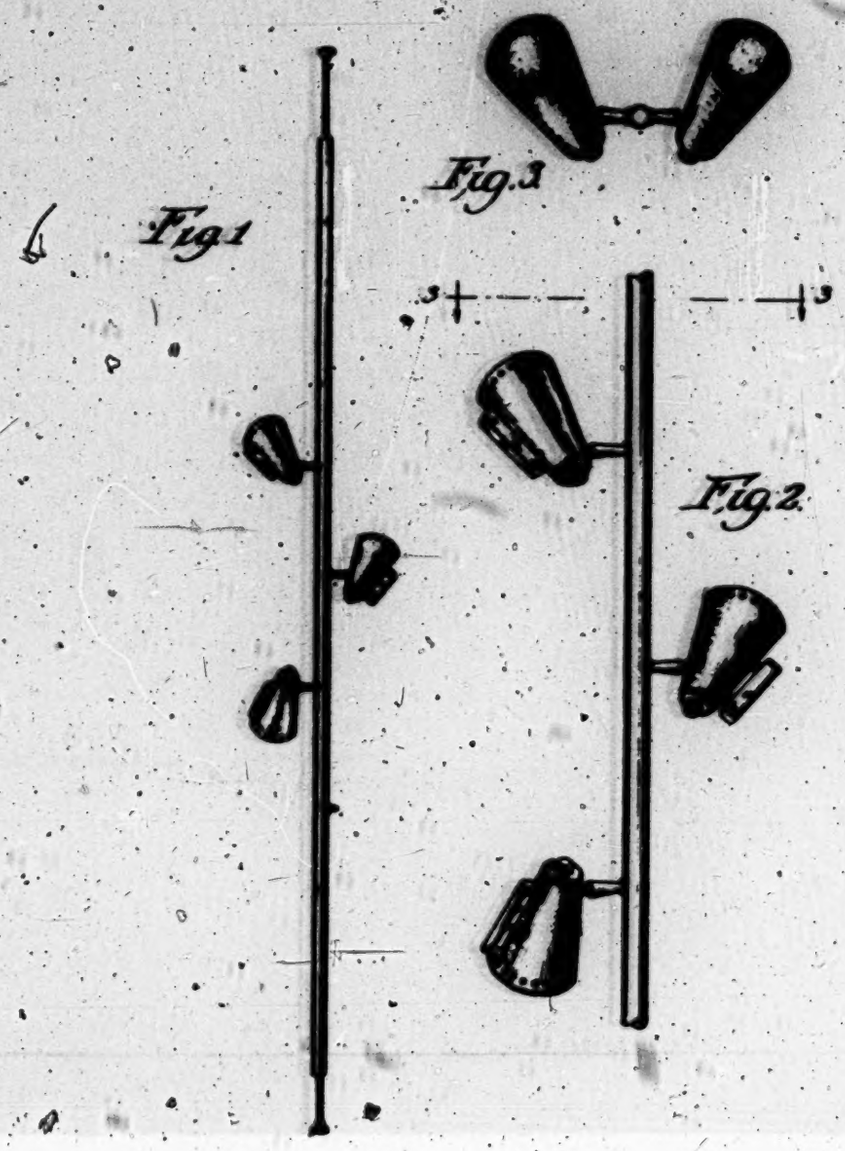
LIGHTING FIXTURE

Theophile A. Stillel, Chicago, Ill.

Application August 22, 1956, Serial No. 42,700

Term of patent 14 years

(Cl. D48—19)



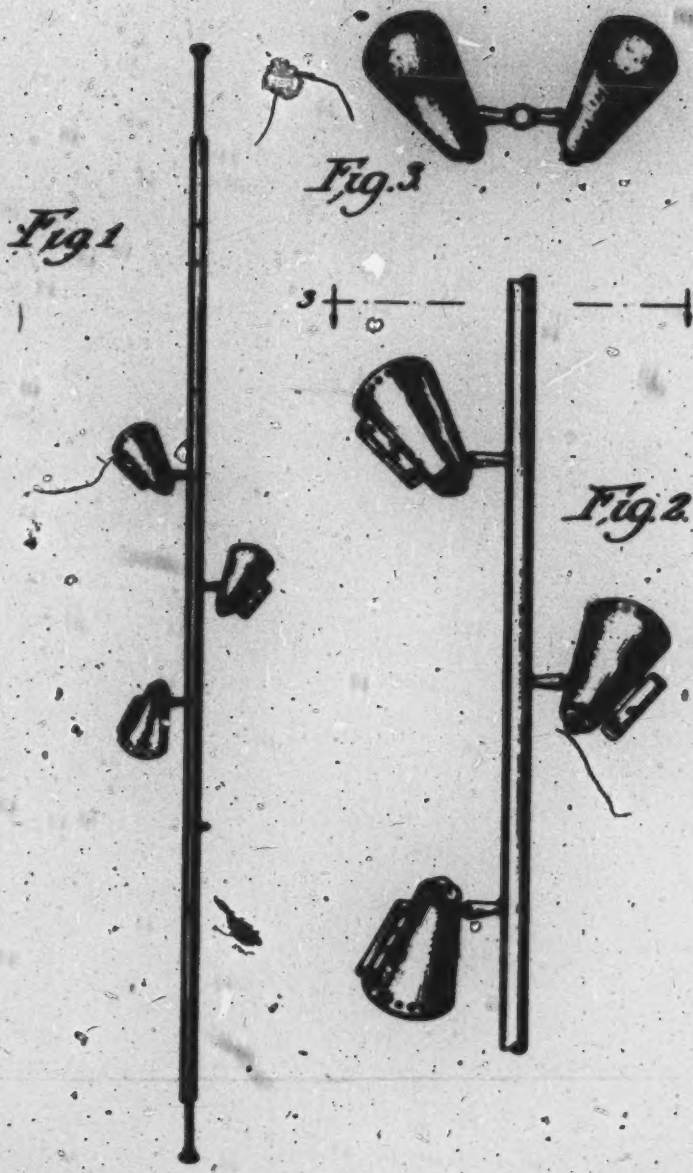


Fig. 1

Fig. 3

Fig. 2

Figure 1 is a perspective view of a lighting fixture, showing my design.

Figure 2 is an enlarged perspective view of a portion thereof.

Figure 3 is a view taken on lines 3—3 of Figure 2.

I claim:

The ornamental design for a lighting fixture, as shown.

References Cited in the file of this patent

UNITED STATES PATENTS

1,137,900 Reichert ..... May 4, 1915

OTHER REFERENCES

L. & C. Mayers Company, 1955, Counter Catalogue, page 260, Item E.

Current Design Winter 1950–51, Lighting equipment section, upper right hand corner of page, two-light floor lamp.

[fol. 380] Clerk's Certificate to foregoing transcript (omitted in printing).

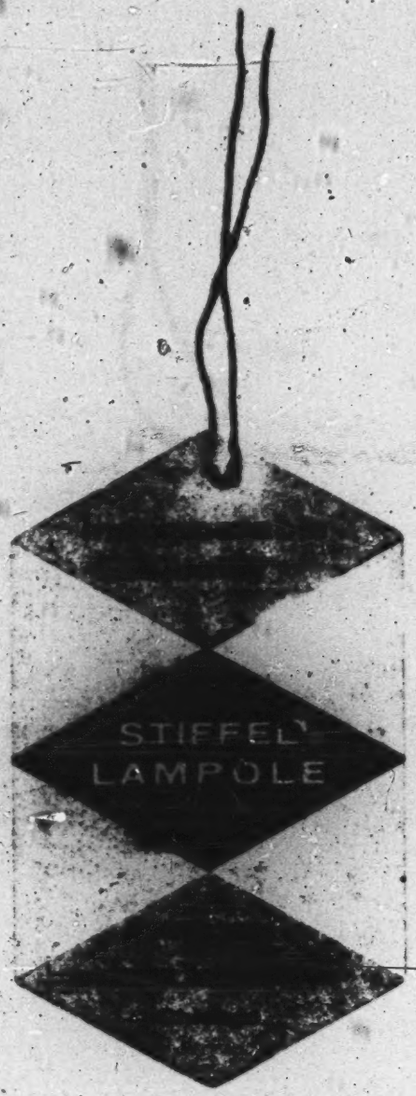
[fol. 381]

IN UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

PLAINTIFF'S EXHIBIT 4

(See opposite) ☞



A NEW CONCEPT DESIGN

Originated and engineered by Stiffel, to serve the lighting needs of today and tomorrow. Stiffel is famous the world over for the ultimate in design and fine lamp craftsmanship.

Pat. No. 2793286

Style No.

[fol. 382]

IN UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

PLAINTIFF'S EXHIBIT 5

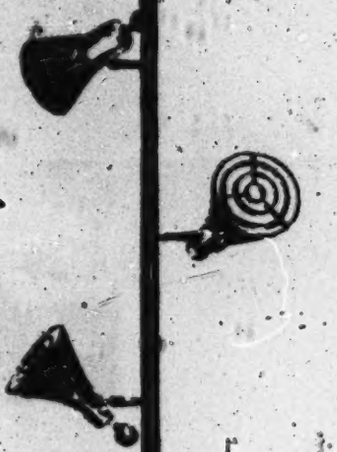
STIFFEL LAMPOLE
has all these
SUPERIOR QUALITY
FEATURES

- Engineered light diffusers for softer, pleasant lighting
- Safe, fool-proof solid brass switch with positive stops
- E-Z Lite switch
- Lampole freely rotates a full 360 degrees
- Porcelain sockets—highest quality materials throughout
- Long-lasting baked enamel finish
- Always-cool wooden handles
- Non-marking rubber ends adjust to uneven ceilings and floors

Pat. No. 2793286
Pat. No. 180251
Style
No

1957

STIFFEL LAMPS



THE STIFFEL COMPANY
GENERAL OFFICES: 525 W. SUPERIOR STREET, CHICAGO
CHICAGO SHOWROOM: 1273 MERCHANDISE MART
NEW YORK SHOW ROOM: 225 FIFTH AVE.

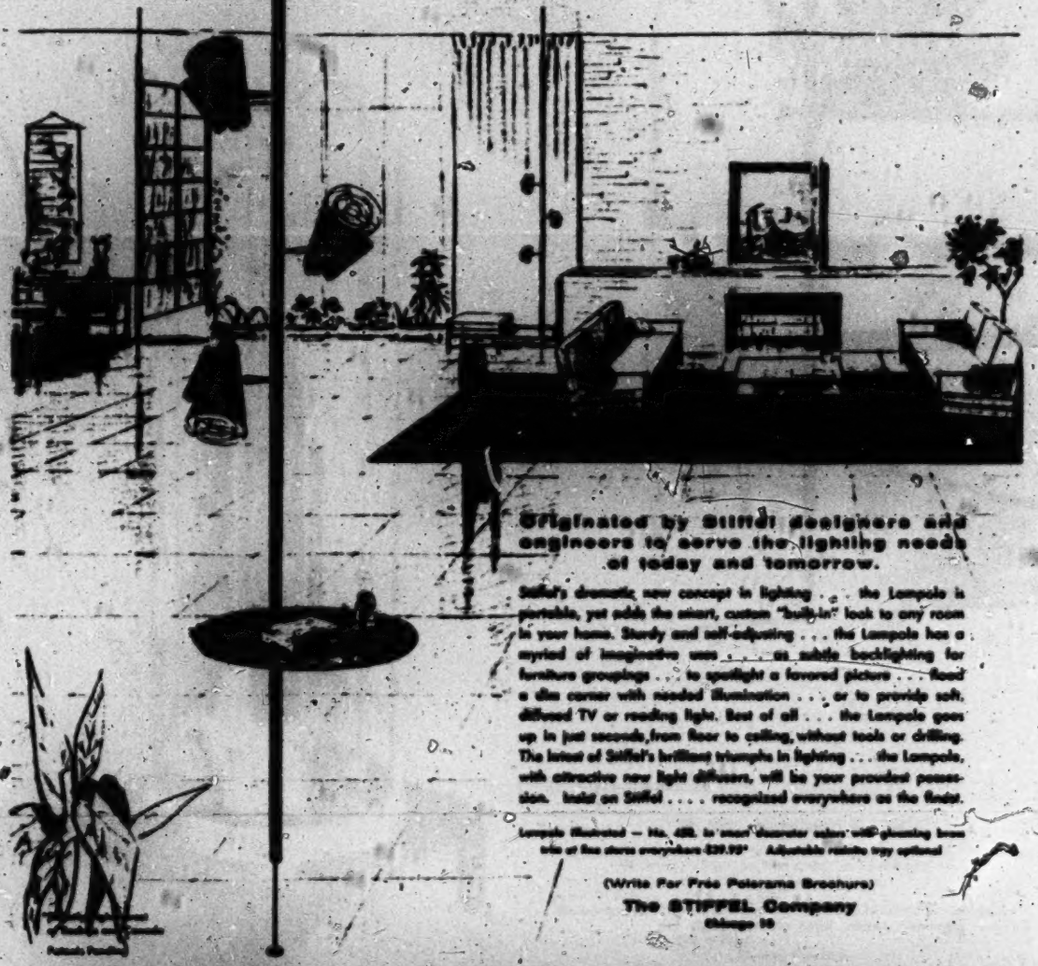
Address all correspondence to
525 W. Superior St., Chicago 10, Ill.

[fol. 383]

In United States District Court
For the Northern District of Illinois
Plaintiff's Exhibit 6

Dramatic • Functional • Ingenious

LAMPOLE
By
STIFFEL



Originated by Stiffel designers and engineers to serve the lighting needs of today and tomorrow.

Stiffel's dramatic new concept in lighting . . . the Lampole is portable, yet adds the smart, custom "built-in" look to any room in your home. Sturdy and self-adjusting . . . the Lampole has a myriad of imaginative uses . . . as subtle backlighting for furniture groupings . . . to spotlight a favored picture . . . flood a dim corner with needed illumination . . . or to provide soft, diffused TV or reading light. Best of all . . . the Lampole goes up in just seconds, from floor to ceiling, without tools or drilling. The latest of Stiffel's brilliant triumphs in lighting . . . the Lampole, with attractive new light diffusers, will be your proudest possession. Insist on Stiffel . . . . recognized everywhere as the finest.

Lampole illustrated — No. 452, in smart decorator colors with gleaming brass trim at fine stores everywhere $39.95* Adjustable resinite tray optional

(Write For Free Polerama Brochure)

The STIFFEL Company
Chicago 10

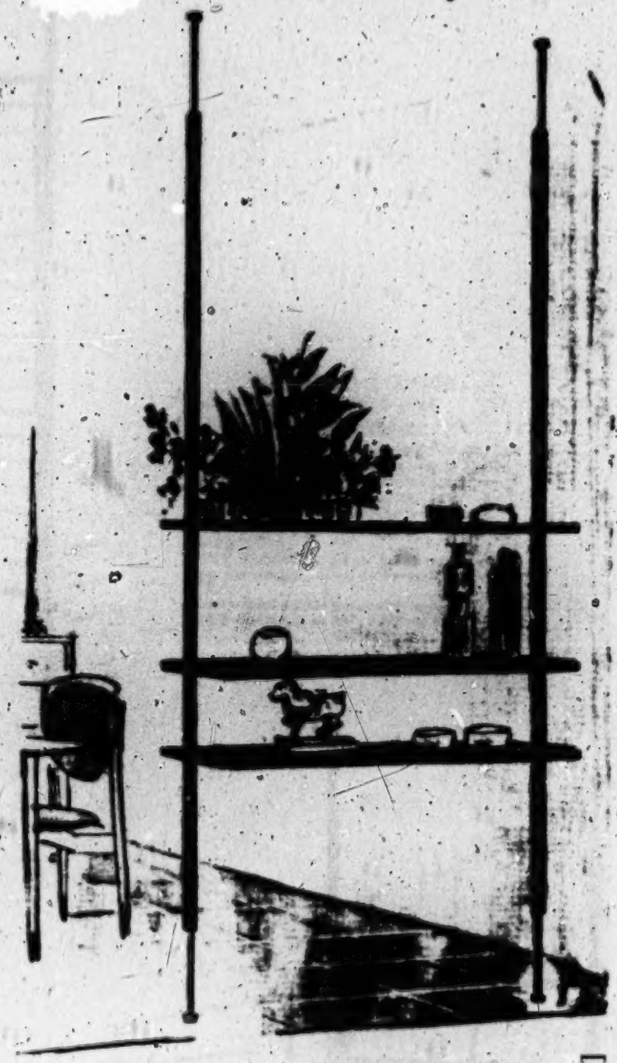
Better Homes | House Beautiful | House & Garden | LIVING

STIFFEL LAMPS

NEW CONCEPT DESIGNS

(Right) **No. 474 ROOM DIVIDER**

Finish: Baked-Enamel Metal Shelves
Specifications: Includes two PORT-A-POLES and three shelves - 12 x 36-3/4 x 3/4". PORT-A-POLES drilled for shelves at 30, 42 & 60" levels. Shelves rest on sturdy steel rods - Baked Black Enamel with Brass trim - For Ceilings 7'10" to 9'2" - Non-marring Rubber Tips - Built-in Tilt Ends, for Slanted Ceilings.
Patent Pending

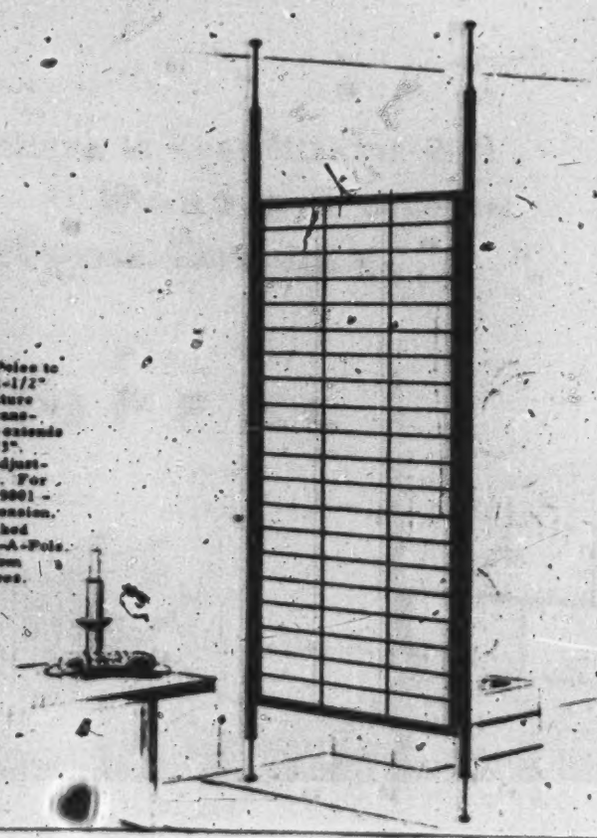


[fol. 385]

(Left) **No. 506 - Bird Cage - TORIKAGO**

Finish: Polished Brass, Satin Aluminum Trim with Hardwood Pedestal Table in Near Black Furniture Finish
Overall Height: 67-1/2" including Pedestal
Size of Table: 24 x 24 x 8"
Illumination: 3-Way Switch - 7 Watt Candelabra Bulbs included for 9 Removable Opal Glass Shades - Canopy Light at Top
Patent Pending

NEW CONCEPT DESIGNS



No. 501 PORT-A-SCREEN
(Right) **No. 502 PORT-A-POLE**
(7 Section Panel)

Easy to install panels and Port-A-Poles to make many arrangements. 30 x 72-1/2" panel in Hardwood with Block Furniture Finish – hemp laminated between translucent plastic sheets. Port-A-Pole extends to fit ceiling levels from 7'10" to 9'3". Heavy spring unit at ceiling level, adjustable threaded foot for uneven floors. For higher ceilings than 9'3" order No. 5001 – 8" Extension, or No. 5001 – 18" Extension. Port-A-Screen panel has brass notched pegs for hanging from holes in Port-A-Pole. Port-A-Screen panel can be hung from Port-A-Pole at 90, 120 or 180 degrees.
Patent Pending

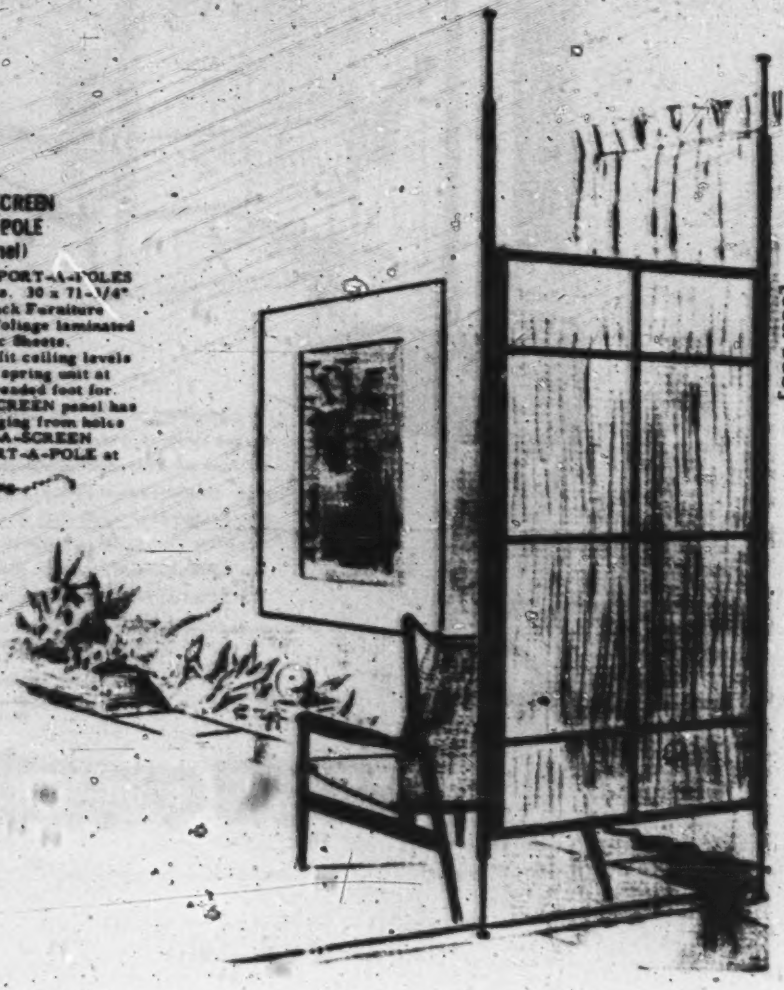
No. 475 PORT-A-SCREEN
(Below) **No. 502 PORT-A-POLE**
(8 Section Panel)

Easy to install panels and PORT-A-POLES to make many arrangements. 30 x 65-1/4" panel in Hardwood with Block Furniture Finish – Off-White Fibreglas. PORT-A-POLE extends to fit Ceiling levels from 7'10" to 9'2". Built-in ends for slanted ceilings.
PORT-A-SCREEN panel has Brass notched pegs for hanging from holes in PORT-A-POLE
PORT-A-SCREEN panel can be hung from PORT-A-POLE at 90°, 120° or 180°.

(Left) **No. 511 PORT-A-SCREEN**
No. 502 PORT-A-POLE
(4 Section Panel)

Easy to install Panels and PORT-A-POLES to make many arrangements. 30 x 71-1/4" Panel in Hardwood with Black Furniture Finish - Hemp & Colored Foliage laminated between Translucent Plastic Sheets. PORT-A-POLE extends to fit ceiling levels from 7'10" to 9'3". Heavy spring unit at ceiling level, adjustable threaded foot for uneven floors - PORT-A-SCREEN panel has Brass notched pegs for hanging from holes in PORT-A-POLE. PORT-A-SCREEN panel can be hung from PORT-A-POLE at 90, 120 or 180 degrees.

Patents Pending



[fol. 386]

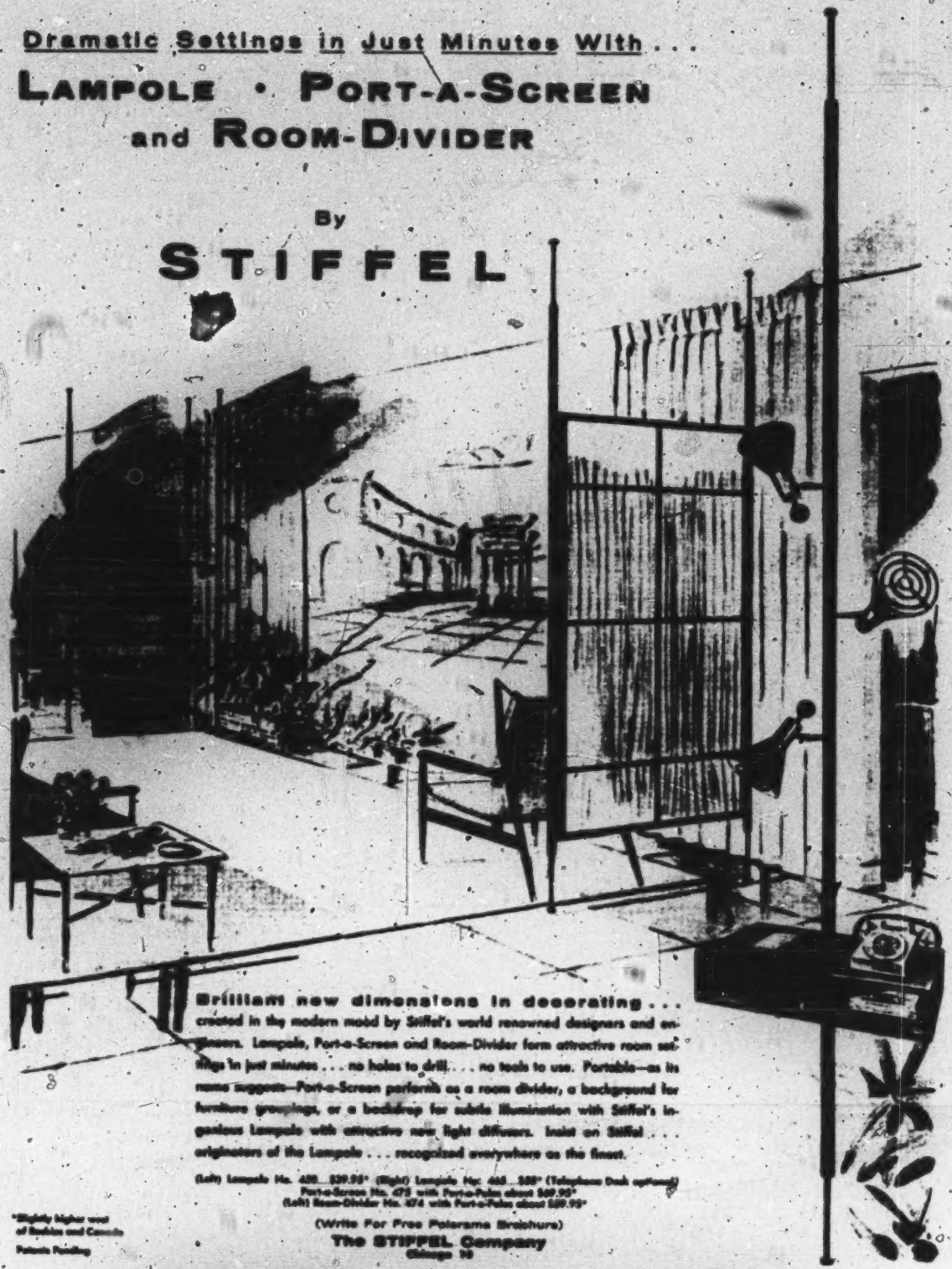
78

Dramatic Settings in Just Minutes With . . .

LAMPOLE • PORT-A-SCREEN and ROOM-DIVIDER

By

STIFFEL



Brilliant new dimensions in decorating . . . created in the modern mood by Stiffel's world renowned designers and engineers. Lampole, Port-a-Screen and Room-Divider form attractive room settings in just minutes . . . no holes to drill . . . no tools to use. Portable—as its name suggests—Port-a-Screen performs as a room divider, a background for furniture groupings, or a backdrop for subtle illumination with Stiffel's ingenious Lampole with attractive new light diffusers. Insist on Stiffel . . . originators of the Lampole . . . recognized everywhere as the finest.

(Left) Lampole No. 488... $39.95* (Right) Lampole No. 468... $88* (Telephone Desk optional)
Port-a-Screen No. 475 with Port-a-Poles about $69.90*
(Left) Room-Divider No. 474 with Port-a-Poles about $89.90*

*Slightly higher west of Rockies and Canada. Patents Pending

(Write For Free Polarama Brochure)

The STIFFEL Company
Chicago 10

House Beautiful | House & Garden | LIVING

[fol. 387]

STIFFEL LAMPS

1957 SUPPLEMENT and PRICE LIST

• IMPORTANT

This catalog supplement shows new styles and other changes introduced since we sent you the 1957 catalog; also our complete Lampole assortment. The complete price list on the back cover includes styles in both the general catalog as well as the supplement. Any styles not listed in the new price list have been discontinued.

[fol. 388]

IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
PLAINTIFF'S EXHIBIT 7

THE STIFFEL COMPANY

General Office and Plant: 525 WEST SUPERIOR STREET, CHICAGO

Chicago Showroom: 1275 MERCHANDISE MART

New York Showroom: 225 FIFTH AVENUE

80

LAMPS

1957 SUPPLEMENT and PRICE LIST

• IMPORTANT

This catalog supplement shows new styles and other changes introduced since we sent you the 1957 catalog; also our complete Lampole assortment. The complete price list on the back cover includes styles in both the general catalog as well as the supplement. Any styles not listed in the new price list have been discontinued.

[fol. 388]
IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
PLAINTIFF'S EXHIBIT 7

THE STIFFEL COMPANY

General Office and Plant: 525 WEST SUPERIOR STREET, CHICAGO

Chicago Showroom: 1275 MERCHANDISE MART

New York Showroom: 225 FIFTH AVENUE

★ *Address all correspondence to 525 West Superior Street, Chicago 10, Ill.*

Broad Consumer Magazine Advertising Coverage

	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER
Lampole...				
Better Homes and Gardens		Full Page	Full Page	Full Page
Living		Full Page	Full Page	Full Page
House Beautiful		Full Page	Full Page	
House and Garden		Full Page	Full Page	
Sunset		Full Page	Full Page	
Home Furnishings Annual	Full Page	Full Page	Full Page	
Collection Lamps...				
House Beautiful		1/4 Page	1/4 Page	1/4 Page
House and Garden		1/4 Page	1/4 Page	1/4 Page
Interiors	1/4 Page	1/4 Page	1/4 Page	1/4 Page
New Yorker	1/3 Page	[illegible]	[illegible]	1/3 Page
Monthly Circulation:	822,900	7,222,900	7,222,900	6,822,900
Cumulative Home Impressions:		8,045,800	15,268,700	21,591,600

Never before has so much been spent to promote one lamp item. Over $100,000 worth of advertising will make its impact on consumers this fall. Tie in with this strong Lampole campaign to get the maximum benefit for your store.

• • FALL 1957 ADVERTISING • •

[fol. 390]

IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
PLAINTIFF'S EXHIBIT 8

STIFFEL

Lamps

1958

THE STIFFEL COMPANY

General Office and Plant: 525 WEST SUPERIOR STREET, CHICAGO

Chicago Showroom: 1275 MERCHANDISE MART

New York Showroom: 225 FIFTH AVENUE

Dallas Showroom: 148 MERCHANDISE MART

★ *Address all correspondence to 525 West Superior St., Chicago 10, Ill.*

Cable Address: STIFFELCO CHICAGO

[fol. 392]

Powerful National Advertising is Selling

Recent Advertising

Write today for Newspaper Mats of best seller Lampoles No. 450, 485, 486—2 col. x 10" each
Also, Table and Floor Lamp Mat Sheet available

[fol. 393]

the Stiffel Line to Millions of Homemakers

TWO PAGE SPREAD AD
in House & Garden, House Beautiful and Living for Young Homemakers

The continuing Stiffel broad consumer Advertising Campaign is creating a strong demand everywhere for the Stiffel Line. Identify your store with Stiffel, the outstanding prestige brand name in lamps. Tie in your own merchandising program with Stiffel Lamp promotions to achieve the maximum benefit for your store.

THE STIFFEL COMPANY
Advertising Schedule
FOR SPRING 1958

	APRIL	MAY
House Beautiful	2 pages	1 page
House & Garden	2 pages	1 page
Living	2 pages	1 page
Sunday Supplements	3/5 page *in 25 Major Cities, April 27*	

FULL PAGE AD
in House & Garden, House Beautiful and Living for Young Homemakers

In United States District Court
For the Northern District of Illinois
Plaintiff's Exhibit 9

STIFFEL *Lamps*

1958 SUPPLEMENT and PRICE LIST

This catalog supplement shows the new styles and changes since the 1958 general catalog was issued. The complete price list includes styles in both the general catalog and this supplement.

THE STIFFEL COMPANY

General Office and Plant: 525 West Superior Street, Chicago

Chicago Showroom: 1275 Merchandise Mart

New York Showroom: 225 Fifth Avenue

★ *Address all correspondence to 525 West Superior St., Chicago 10, Ill.*

Cable Address: STIFFELCO CHICAGO

Continuous Broad NATIONAL ADVERTISING

TWO PAGE SPREAD AD
in House & Garden, House Beautiful and Living for Young Homemakers

The continuing Stiffel broad consumer Advertising Campaign is creating a strong demand everywhere for the Stiffel Line. Identify your store with Stiffel, the outstanding prestige brand name in lamps. Tie in your own merchandising program with Stiffel Lamp promotions to achieve the maximum benefit for your store.

Stiffel Lamps are sold in the best stores everywhere

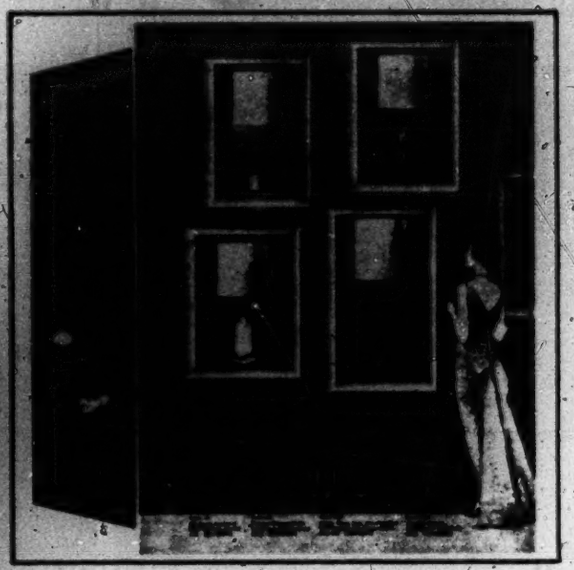
FULL PAGE AD
in House & Garden, House Beautiful and Living for Young Homemakers

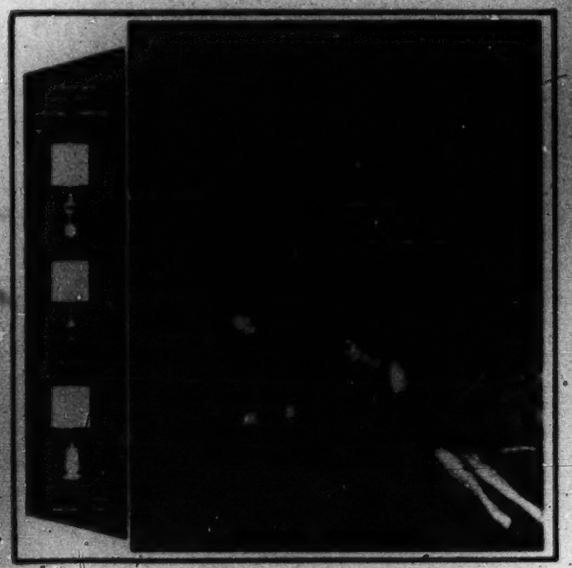
[fol. 396]

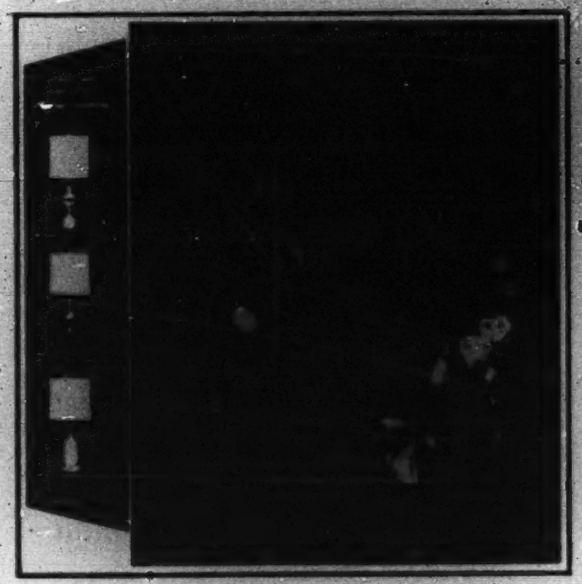
Increases Awareness and Stimulates Demand for Stiffel Lamps

ADVERTISING SCHEDULE FOR FALL, 1958

MEDIA	SEPT.	OCT.	NOV.
House Beautiful		1 page & 1 column	1 page & 1 column
House & Garden		1 page & 1 column	1 page & 1 column
House & Garden Book of Decorating	1 page & 1 column		
Living for Young Homemakers	1 page		1 page & 1 colgmn
The New Yorker			1/3 page 11/1/58 1/3 page 11/15/58 1/3 page 11/29/58





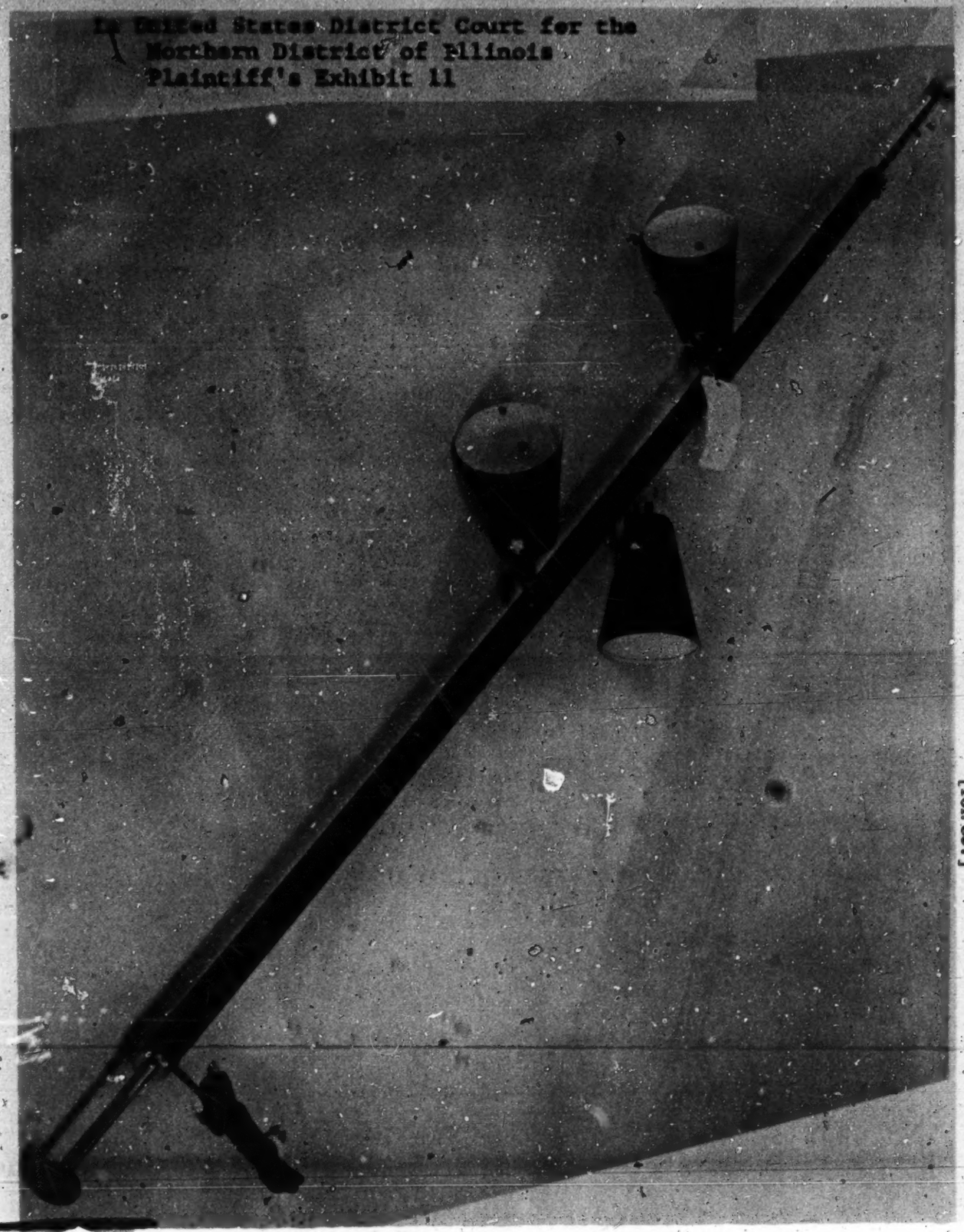


New Yorker Ad
Nov. 1, 1958
Lamp No. 86

New Yorker Ad
Nov. 15, 1958
Lamp No. 84

New Yorker Ad
Nov. 29, 1958
Lamp No. 87

In United States District Court for the
Northern District of Illinois
Plaintiff's Exhibit 11



[fol. 397]

In United States District Court for the
Northern District of Illinois
Plaintiff's Exhibit 12

[illegible]

[fol. 399]

IN UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

PLAINTIFF'S EXHIBIT 16

November 13, 1957

Mr. Wm. Pemberton, Lamp Buyer
Marshall Field & Company
111 N. State Street
Chicago, Illinois

Dear Mr. Pemberton:

We are writing you about the complaint you received from your customer, Mrs. John J. Driscoll, 421 Berkley, Elmhurst, Illinois, concerning a pole lamp shown in the Sears Roebuck catalog.

From Mrs. Driscoll's letter, she is under the impression that the Sears lamp is identical to our Lampole which is Nationally Advertised at $39.95 and sold everywhere by the best stores in the United States.

As you know, it is common practice for many manufacturers to copy expensive designs and sell to retailers at a reduced cost by reducing the quality through poorer materials and inferior labor.

It so happens that we have the pole lamp, offered by Sears, in our office because we were naturally curious to make the comparison ourselves. We are sure you understand the vast difference in the quality of a Stiffel product over the inferior imitation, but we would like to point out for your customer the many points of superiority of the Stiffel Lampole.

A very important feature of the Stiffel Lampole are the three solid brass swivels with *positive stops*. These swivels in themselves are apt to cost more than all the parts put together of the competitive pole, which uses one of substandard quality and workmanship.

Our metal shades are equipped with bakelite diffusers which are carefully engineered to shield the light and prevent glare. The competitive pole has none of these.

[fol. 400] While the Sears photo gives the impression that the wood handles are the same, they are skimpy, rough and partially finished.

The Lampole is carefully finished and subject to strict inspection. The brass parts are nicely polished and do not show any scratch marks.

The Stiffel Lampole has a 3-way master light control which is conveniently located and much more expensive from a labor standpoint than the competitive pole which has individual light switches.

The Stiffel Lampole uses porcelain sockets which are necessary because of the confining heat of a narrow metal shade. The competitive pole uses an inexpensive socket which would not be acceptable to Stiffel.

Naturally, the Stiffel reputation for making the finest lamps is at stake and therefore the quality of a Stiffel Lampole must be in keeping with the high quality standards of Stiffel manufacture.

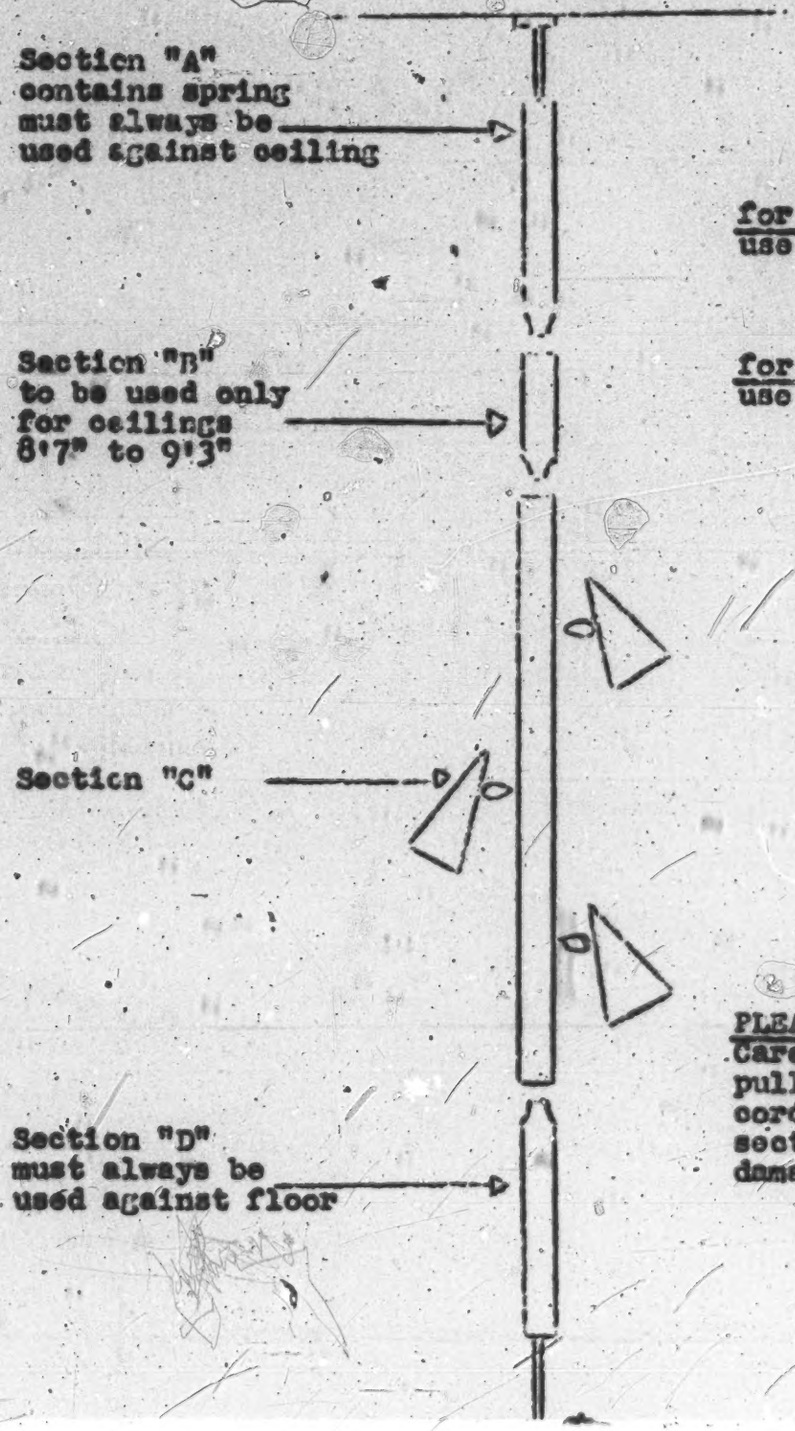
There are many other hidden quality features which are difficult to describe such as the basic quality of the many parts used in the spring mechanism and pole itself. However, we welcome the comparison and would suggest that your customer actually see the imitation pole lamp rather than judge its quality from a photo in a mail order catalog. It is unfortunate that products of fine quality and design are copied to give people the impression that they have overpaid because of the availability of an inferior imitation at less money. However, the customer is certainly right in demanding an explanation and we hope that our letter convinces her that sometimes a "bargain" is not really a bargain. We are sure her own comparison of the two products will be convincing.

Cordially yours,

Fred Phillips, Vice President
FP:jl

ASSEMBLY INSTRUCTIONS

FLOOR TO CEILING LAMP OR ROOM DIVIDER [illegible]



for ceiling 7'10" to 8'7"
use section: A-C-D

for ceiling 8'7" to 9'3"
use sections A-B-C-D

PLEASE NOTE:
Care should be used in pulling the electrical cord through the bottom section to avoid possible damage to insulation

[fol. 401]

In United States District Court
For the Northern District of Illinois
Plaintiff's Exhibit 17

3946 30 022.61H 3

POOL STOCK
SHIPPER COPY

Sears 43503·47

SEARS, ROEBUCK AND CO.

NAME Mr. R. S. Freiberg STORE NO.

ADDRESS APT.

CITY PHONE NO. 18C1067

NEAR ST. OR INSTRUCTIONS Lake Cuvelt

FILED

DATE PROMISED APR 18 1962

DIV.	SALES NO.	DATE	KIND SALE	APPROVAL	ACCOUNT NO.
21	103	9 24 57	Cust	AT ___ O'CLOCK	

ROY H. JOHNSON
CLERK

IN CASE OF ERROR, RETURN OR EXCHANGE, THIS CHECK MUST BE PRESENTED

CAT. NO.	QUAN.	ARTICLE	PRICE	AMT. SALE
21DM	7060			
	1	Modern Pole Lamps		21 95
			Tax	66
				22 61

DO NOT WRITE IN THIS SPACE

PRICE ENC. VALUE

DIV.	SALES NO.	DATE	KIND SALE	AM'T. REC'D.	AMT. SALE

43503·47

CUSTOMER'S VOUCHER

DATE PROMISED

DEPOSIT

BALANCE

THANK YOU
PLEASE CALL AGAIN.

F2020 REV. 5-28-55 PRINTED IN U.S.A.

[fol. 402]

IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

PLAINTIFF'S EXHIBITS 18 & 18B

94

PURCHASE COUPON BOOKS

Sold on the EASY PAYMENT PLAN

Obtain a book of coupons now from our Credit Department and pay for it on convenient monthly terms.

Use the coupons like cash, in any Sears store, to purchase your day-to-day needs.

Books are available in denominations from $5.00 to $50.00.

SEARS

"SHOP AT SEARS AND SAVE"

Laboratory Tested Merchandise backed by Sears Famous Guarantee

SEARS ROEBUCK AND CO.
CUSTOMER'S VOUCHER
In Case of Inquiry or Non-Delivery
Present This Voucher at Customer Service Desk
WHAT WE SELL, WE SERVICE TOO
Factory Approved Methods - Genuine Sears Parts
Expert, Economical Service

[fol. 404]

21 4b CUSTOMER COPY

SALES NO. 580 DATE 4-24

NUMBER OF ARTICLE IN CATALOG	QUAD.	NAME OF ARTICLE	COLOR	SIZE	PRICE	AM'T. SALE	SHP. WGHT. LBS.	OZ.
21 DM 1060	1	[illegible]				19 27	12	
			COLOR	SIZE				
			COLOR	SIZE				
			COLOR	SIZE				
			COLOR	SIZE				
			COLOR	SIZE				
			COLOR	SIZE				
			COLOR	SIZE				
			COLOR	SIZE				

FILED
APR 18 1962
O'CLOCK
ROY H. JOHNSON
Deed

PAID
mls

SEARS, ROEBUCK AND CO.
10310-12

TO CUSTOMER VIA:
- PARCEL POST ☐
- RAIL FREIGHT ☐
- MT. EXPRESS ☐
- TRUCK FREIGHT ☐
- PKGE. DELIVERY ☐

TO STORE FOR:
- CUSTOMER PICK-UP ☑
- RE-DELIVERY ☐
- EXCHANGE ☐

CASH ☑
C.O.D. ☐
E.P. ☐
—— ☐

INCLUDES EXCISE TAX $

TOTAL WGT. IN LBS.		12 Rubbing
Total for Merchandise	19 21	
Tax on Sale (If any)	51	
Shipping Charges	50	
Total Amt. of Sale	20 35	
Cash Rec'd. with Order		
Balance		
Carrying Charge		
Easy Pay'l. Balance		

ORDERED FROM CONTROL STORE
ON SHIPMENTS FROM OTHER CONTROL STORES ENTER CONTROL STORE'S ABBREVIATION ABOVE.

F. 3166 REV. 12-22-52
PRINTED IN U.S.A.

[fol. 405]

SEARS CATALOG SALES DEPARTMENT

Offers a convenient, one-stop, economical way to buy. Select from over 100,000 items at Sears low prices.

Place your order by phone or in person at our Catalog Order Desk. No letter postage or money order fee is required.

Additional savings may be made on shipping charges and C. O. D. fees by calling for your merchandise at our store.

Catalog purchases may be made on Sears Easy Payment Plan. Just a small down payment and a few dollars each month will buy anything we sell in purchases of $20 or more. Once your account is established and you have an open account with us, you can "add on" purchases totalling $10 or more.

"SHOP AT SEARS AND SAVE"

Laboratory Tested Merchandise backed by Sears Famous Guarantee

[fol. 406]

IN UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

PLAINTIFF'S EXHIBIT 21A

Mr. Vallette:

Possibly you will remember my speaking to you about a possible place for a deca-pole type of bullet tree for use in modern houses. I see somebody has come out with such a lamp. If you are interested you could probably find out who makes it by writing to the publishers of the magazine attached.

Frank C. Stover

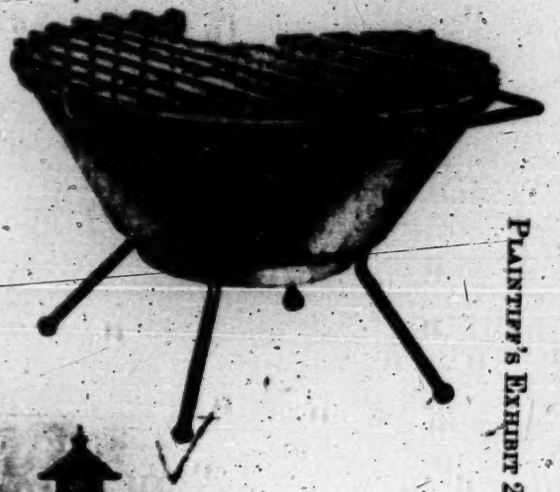
August 8, 1956

att.

In United States District Court
For the Northern District of Illinois
Plaintiff's Exhibit 21B

[fol. 407]

NEWS
of the newest



LITTLE GRILL WILL GO FAR

If you like to have one picnic on the patio and the next under the pine in the far corner of the yard, this little charcoal grill will be a favorite companion. It weighs only four pounds, and the legs detach and store inside for the easiest possible portability! It's only 8½" high, but the 12" diameter grill gives you 110 square inches of perfect broiling area, over a special trap for ashes. There are no screws to use; it assembles so easily that the kids can put it together while Mom unpacks lunch.

STAKE A CLAIM TO LIGHT

When summer's balmy evening breezes beckon you to the garden or patio, you'll want light, and several lamp manufacturers have risen to the challenge. Here are two examples of one manufacturer's solution to the outdoor lighting problem. The Colonial coach type electric garden light comes with a 20' neoprene cord and is Underwriters' Laboratory approved for outdoor use. The trio of hurricane lamps has clear glass chimneys to protect candle flames. Both of these lamps and similar styles have an extra long stake and disk base to hold them firmly in the ground. A wrought iron adapter base can be purchased to convert them to indoor use when summer season's done. Each lamp is 54" high when the stake is in the ground.

"FLOOR LAMP" WITH FLAIR

The very latest in lighting is this baseless Lampole, with its triumvirate of behandled light cones. In your choice of four decorator colors, it will look built-in — but you can move it wherever you please. The secret is in a spring system at ceiling level which allows it to extend to ceiling heights varying from 7'10" to 9'2". Non-marking rubber ends in brass discs get a firm grip on floor and ceiling to hold it firmly in place. A three-way master switch controls light intensity, and the walnut-handled metal shades can easily be adjusted with no fear of toasted fingertips.

CLOSETS BY THE BOTTLE

Even in this age of condensed books and vitamin concentrates we didn't expect to find cedar closets in bottles — but we did! What the bottle really contains, of course, is the essence of the cedar tree; penetrating, pure cedar oil. A few drops behind baseboards, inside door trims, along shelf supports "cedarizes" wood, plaster, or composition board and gives your storage caches the aromatic protection of cedar. It's harmless, stainless; suggested for use in closets, chests, attics, drawers, trunks, storage boxes and cabinets. Its powerful, woody aroma is so long-lasting that only a few drops will go a long, long way.

the stake is in the ground.

NEWS
of the newest

"FLOOR LAMP" WITH FLAIR

The very latest in lighting is this baseless Lampola, with its triumvirate of behandled light cones. In your choice of four decorator colors, it will look built-in — but you can move it wherever you please. The secret is in a spring system at ceiling level which allows it to extend to ceiling heights varying from 7'10" to 9'2". Non-marking rubber ends in brass discs get a firm grip on floor and ceiling to hold it firmly in place. A three-way master switch controls light intensity, and the walnut-handled metal shades can easily be adjusted with no fear of toasted fingertips.

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AS GOOD AS A GARDENER

Yes, this gadget that tells the outside water tap when to turn off the lawn sprinkling system is as good as a gardener. Just attach it to the water faucet, set it, and it will automatically shut off the water after any ten-minute period up to an hour. With the water timer working for you, you can leave home and like it — no worry about water waste while you're out for the afternoon. And now, at last, an evening out need not be climaxed by a midnight trip to tend the forgotten tap!

LOOKS LIKE CERAMIC BUT IT'S VINYL

A ceramic tile pattern combines with the walk-easy virtues of vinyl in a new floor covering for the bathroom, laundry, kitchen or utility room.

COURT OF ILLINOIS
LB
[fol. 407]
99

[fol. 408]

In United States District Court
For the Northern District of Illinois

Plaintiff's Exhibit 21C

August 21, 1956

Mr. F. C. Stover:

This refers to your note of August 8th and the attached magazine showing a deca-pole bullet tree lamp.

Last week while at Randolph we worked out eleven new modern numbers among which is a deca-pole lamp. We shopped competition and it is our opinion that we can create an attractive as well as competitive item of this type.

R. M. Vallette
/s/ RMV

RMVmj

cc: Mr. H. S. Stein—Randolph Metal Works
Mr. F. B. Reinert

[fol. 409]

IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

PLAINTIFF'S EXHIBITS 22A & 22B

Mr. Vallette:

Not only the five sections but the very loose fit of the bottom screw makes Randolph's pole lamps very wobbly.

Frank C. Stover

October 13, 1959

[fol. 410] November 18, 1959

Mr. F. C. Stover:

This refers to your note of October 13th regarding the pole lamps at Randolph.

Randolph has been working to improve their poles as follows: at each connection a ridge will be put into the inside piece which creates a tension and makes each connection very solid. In addition to this they have improved the top and bottom sections by making the channel longer so as to hold the small sections more rigid where they screw into the pole.

These two improvements create a rigid pole, a sample of which I will show you when you return from your present trip.

Randolph will specify these improvements as soon as present stock is gone. Their present stock of poles is quite large because of the steel situation but it is expected that they will be able to incorporate these improvements into the pole lamps about February or March of next year.

/s/ R. M. VALLETTE
R. M. Vallette

RMV:cc

cc: Messrs. Baker
Raus

[fol. 411]

IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

PLAINTIFF'S EXHIBIT 24

(Letterhead of Randolph Metal Works, Inc.,
Philadelphia 22, Pa.)

October 31, 1957

Miss Kay Stuelpnagel
Dept. 621
Sears, Roebuck & Co.
925 S. Homan Avenue
Chicago, Illinois

Dear Kay:

As per phone conversation had with you to-day we have cancelled 2-#7060 on P.O. #R523668 for Greensboro St. #2345.

Very truly yours,
RANDOLPH METAL WORKS, INC.
By: /s/ HARRY S. STEIN

HSS/bhw

[fol. 412]

IN UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

PLAINTIFF'S EXHIBIT 25

(Letterhead of Randolph Metal Works, Inc.,
Philadelphia 22, Pa.)

October 31, 1957

Miss Kay Stuelpnagel
Dept. 621
Sears, Roebuck & Co.
925 S. Homan Avenue
Chicago, Illinois

Dear Kay:

As per phone conversation had with you today, we are elimimating the walnut handles on #7060 our #724 decca pole, for retail only, to take effect at once. The bullets that we have on hand with the two holes to insert the handles with will be plugged with a metal cap.

We will continue to ship the 7060 for the Fall General Catalog with the walnut handles. However, these handles will be eliminated for the 1958 Spring General Catalog, at which time #7095 will be assigned.

Very truly yours,

RANDOLPH METAL WORKS, INC.

By: /s/ HARRY S. STEIN

HSS/bhw

[fol. 413]

IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

PLAINTIFF'S EXHIBIT 26

CHICAGO 7, ILLINOIS

February 16, 1959

Mr. Harry S. Stein
Randolph Metal Works, Inc.
10th & Susquehanna Ave.
Philadelphia 22, Pa.

Dear Harry:

Will you be kind enough to send one each of the following samples to Roller Lamp Company in Los Angeles. These are being sent in order to see if these items can be duplicated for the book out on the West Coast. As you know, you are duplicating some of the items from there.

Our #	Your #	Description
7302	1104	Triple bullet pole. Colors: Black and HH parchment beige.
7305	1172	Triple bullet pole. Polished brass and white enamel.
7098	997	Brushed brass pole, triple bullet with small walnut knobs.
7193	1161	Triple bullet pole, polished brass with rattan bullets.
7096	693	Swedish triple bullet pole, brushed brass.
7306	1113 Rev.	Polished brass lantern pole, Hawaiian Grass lantern.
7112	1102	Brushed brass lantern (to be made in fall with switch in pole).

Our #	Your #	Description
7318	1215	Painted flex arm bullet lamp. Black and HH parchment beige.
7279	638A	Swedish tree lamp in brushed brass.
7282	657	Swedish flex arm in brushed brass.
7099	919	Medium bullet tree. Brushed brass with small walnut knobs.
7083	1022	Flex arm to match above.
7473	1211	Black enamel round metal table for pole lamps.
7314	1169	Metal Shelf. Black.

[fol. 414]

7315	1168	Metal shelf. Black.

We are also carrying the following, which need not be sampled, but are being put into this letter for the record.

7160	1111	Pole without lamps. Black and beige.
7313	1197	Pole without lamps. Polished brass finish.
7079	1095	Pole without lamps. Brushed brass.
7174	1107	8" extension in black and beige.
7169	1115	8" extension, polished brass finish.
7163		8" extension, satin brass.
7127	1141	Round table for poles.

This last item plus the shelves, I do not suggest making on the West Coast because I believe we will be changing these to lower priced items as soon as we can.

When the samples are received at Roller, Mr. Pearson will go over them and, at that time, there will be questions with regard to making these items on the West Coast or bringing in some of the parts from Philadelphia. It is assumed that Roller or other sources can duplicate most of the lamps

except the Swedish line and the middle line which we call the "megaphone." These bullets are specially made at Randolph and I know Mr. Pearson will want costs on these, however, let us wait until they see the lamps and then can determine whether they want costs finished or unfinished, just for the bullets or the bullets and the poles, etc.

It will be appreciated if you can expedite the shipment of these samples, even if you have to back order several, so that Mr. Pearson can begin working on these with the idea of creating Pacific Coast sources. It will be appreciated if you can send these samples at no charge.

Very truly yours,

SEARS, ROEBUCK AND CO.

R. M. Vallette
Department 621

RMV:cc

cc: Messrs: Kelleher, Pearson, Jack Roller
Miss C. Stuelpnagel

[fol. 415]

IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

PLAINTIFF'S EXHIBIT 27

November 19, 1958

Mr. Harry S. Stein
Randolph Metal Works, Inc.
10th & Susquehanna Ave.
Philadelphia 22, Pa.

Dear Harry:

Attached is a listing of the names and addresses of the eleven Department 712 men to whom we would like you to send a sample of our low end pole, stock #74000.

Please send black, one each at no charge and with transportation paid. Please send by mail or regular express.

I am giving you an extra copy of this letter to substantiate this request on your records.

Please charge the sample account in your plant.

Very truly yours,

SEARS, ROEBUCK AND CO.

R. M. Vallette
Department 621

RMV:cc
Att.

cc: Messrs. Baker
Stewart

[fol. 416] *Orders for Dept. 712 Men*

Sears, Roebuck & Co.,
Dept. 712
4640 Roosevelt Blvd.
Philadelphia 32, Pa.
Attn: H. J. Du Devine

Sears, Roebuck & Co.,
Dept. 712
8 E. Congress Parkway
Chicago 5, Illinois
Attn: Ray Colwell

Sears, Roebuck & Co.,
Dept. 712
677 Ponce de Leon Ave.
Atlanta 8, Ga.
Attn: Charlie Smith

Sears, Roebuck & Co.,
Dept. 712
27-51st Street
Pittsburg 1, Pa.
Attn: Al Schinskie

Sears, Roebuck & Co.,
Dept. 712
495 N. Watkins Ave.
Memphis 2, Tenn.
Atten: Al G. Adams

Sears, Roebuck & Co.,
Dept. 712
201 Brookline Ave.
Boston 15, Mass.
Attn: Tom Scanlan

Sears, Roebuck & Co.,
Dept. 712
2507 Fairway Drive
Greensboro, N. Carolina
Attn: A. J. Walker

Sears, Roebuck & Co.,
Dept. 712
360 W. 31st St.
New York 1, N. Y.
Attn: John A. Markin

Sears, Roebuck & Co.,
Dept. 712
1409 S. Lamar St.
Dallas 2, Texas
Attn: Houston Lumpkin

Sears, Roebuck & Co.,
Dept. 733
4640 Roosevelt Blvd.
Philadelphia 32, Pa.
Attn: Harry Ploeger

Sears, Roebuck & Co.,
Dept. 712
3625 Truman Road
Kansas City 27, Mo.
Attn: A. J. Mayotte

[fol. 417]

IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

PLAINTIFF'S EXHIBITS 28A & 28B

January 3, 1958

Mr. Harry Stein
Randolph Metal Works, Inc.
10th & Susquehanna Ave.
Philadelphia, Pa.

Dear Harry:

This is to advise you that we are discontinuing #7060 and will replace with #7095.

Will you please let me have a 3 x 4 picture of the new number. I will use the cost I now have for mail order. Is this OK? Are you putting any buttons on the holes—and will you run out of the bullets with holes soon.

Very truly yours,

SEARS, ROEBUCK AND CO.

R. M. Vallette
Department 621

RMV:ms

[fol. 418]

(Letterhead of Randolph Metal Works,
Philadelphia 40, Pa.)

January 15, 1958

Mr. R. M. Vallette
Dept. 621
Sears, Roebuck & Co.
925 S. Homan Avenue
Chicago, Illinois

Dear Bob:

This is in reference to your letter dated January 3, 1958 in which you advised us that you are discontinuing the #7060 and will replace it with the #7095.

As per your request, we have ordered a three by four picture of the new number. As soon as it is received it will be forwarded on to you.

It is satisfactory to use the cost that you now have for mail order on this number.

We are putting buttons on the hole that were formerly used for the handle.

We have in stock approximately *2500* bullets with holes for handles in which it will be required to plug the holes.

Very truly yours,

RANDOLPH METAL WORKS, INC.

By: /s/ HARRY

HSS/bhw

[fol. 419]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Nos. 13724-5

September Term, 1962—January Session, 1963

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

THE STIFFEL COMPANY, Plaintiff-Appellant and Cross-Appellee,

vs.

SEARS, ROEBUCK AND CO., Defendant-Appellee and Cross-Appellant.

OPINION—January 23, 1963

Before Hastings, Chief Judge, Knoch and Kiley, Circuit Judges.

KILEY, Circuit Judge. This is a patent infringement and unfair competition suit. Defendant answered that the patents in suit were invalid and that defendant was not guilty of unfair competition; and its counterclaim sought declaratory judgment accordingly. The District Court found the patents invalid, but found defendant guilty of unfair competition. From the judgment on these findings, each party has appealed.

The patents in suit are Stiffel Patent No. 2,793,286 and Stiffel Design Patent No. 180,251, both relating to floor to ceiling "pole lamps." The patents were issued to Theophile Stiffel in May, 1957, and subsequently were assigned to plaintiff. The lamp was first shown the public in 1956. Plaintiff learned from a Sears, Roebuck & Co.[1] catalogue in 1957 that pole lamps were being sold by Sears.

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[1] Hereinafter referred to as Sears.

It purchased a Sears lamp in Greensboro, North Carolina, and this suit followed.[2]

[fol. 420] The vital questions are upon the findings and conclusions with respect to patent invalidity and unfair competition. There is, however, a preliminary procedural question.

As part of the Sears proof, the court admitted in evidence Exhibit No. 55, a Deca pole lamp. Plaintiff contends the ruling was erroneous because Sears failed to give notice of the exhibit under 35 U. S. C. § 282. That section requires at least thirty days notice of patents and publications relied on as anticipating the patents in suit. However, the trial court may admit the proof, in the absence of notice, "on such terms as the court requires." The ruling on Exhibit No. 55 was within the court's discretion. *C. S. Johnson Co.* v. *Stromberg*, 242 F. 2d 793, 797 (9th Cir. 1957), *Thermo King Corp.* v. *White's Trucking Service, Inc.*, 292 F. 2d 668 (5th Cir. 1961). We are not convinced, on the facts before the District Court, that plaintiff had no opportunity, because of the ruling, to present his case, as the Court of Appeals was convinced in *Thermo King*. We find no abuse of discretion and no error in the ruling.

The Stiffel pole lamp consists of a plurality of detachable tubular members, of small diameter, joined together to form a single pole longer than the distance between floor and ceiling of a room. It carries three lamps,[3] with swivel brackets, on the exterior of one of the sections. The lamps are served by wires "extending interiorly"[4] down through and out the lower section of the pole. In use it is supported between floor and ceiling under compression of a spring contained in the uppermost section. The upper and lower ends are small round felt or rubber covered discs to protect ceiling and floor. The lower disc is at the end of an adjust-

[2] Originally filed in North Carolina and later removed to the Northern District of Illinois, Eastern Division, for trial.

[3] The patent application illustration shows three lamps but "• • • while three are shown any number of lighting fixtures may be suitably arranged on said section at different desired elevations • • • "

[4] Term used in Stiffel patent application claims.

able leg for making fine adjustments to the length of the pole.

The District Court found that the Stiffel pole lamp was anticipated in the prior art more than one year prior to the Stiffel patent application in January, 1956, by Sears' public use and sale of the Deca pole lamp; and in printed publications. The question is whether the court erred in concluding [fol. 421] on these findings, that Stiffel Patent No. 2,793,286 is invalid.[1]

The findings underlying the conclusion have substantial basis in the admitted use of the Deca poles by Sears in 1953 and 1954, and the evidence of their published illustrations, sketches and descriptions more than one year prior to the Stiffel patent application, *H. W. Gossard Co.* v. *J. C. Penney Company*, 304 F. 2d 515, 518 (7th Cir, 1962), and were sufficient to overcome the presumption of validity of the patent. We hold the conclusion of invalidity of Patent No. 2,793,286 is not clearly erroneous.

The Deca pole included all the essential elements of the Stiffel pole except the adjustable leg. Instead of the adjustable leg, the Deca pole employed an equivalent, *i.e.*, sections of various lengths for adjusting height. The court was not required to find on the evidence that the adjustable leg was novel or was functionally different than the various sized sections of Deca pole which have the same purpose. This is true also of the Stiffel spring unit and the Deca pole sliding section and spring which have the same effect. And there is substantial evidence that Deca pole had the wire run "extending interiorly" within the pole.

The District Court's conclusion of invalidity of Design Patent No. 180,251 rests on findings that the Deca pole Exhibit No. 55 does not differ in ornamental design aspects from the Stiffel patented design, and that the Miller

[1] 35 U. S. C. § 102 provides, in part, as follows:

"A person shall be entitled to a patent unless—a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States * * *."

"Lamp Tree" was disclosed in several magazines in 1950 and 1954. Plaintiff challenges this conclusion.

The Design Patent claims only "the ornamental design for a lighting fixture, as shown." The finding with respect to the Miller "Lamp Tree" anticipating the Stiffel design has sufficient support in the evidence of the disclosure of the Lamp Tree in printed publications. The finding is not clearly erroneous, and we need not therefore discuss the finding as to Exhibit No. 55. We hold the conclusion of the invalidity of Design Patent No. 180,251 is not erroneous.

Because the District Court's conclusions with respect to the patents are not erroneous, it follows that the court did not err in its conclusion of non-infringement.

[fol. 422] There is substantial basis in the evidence to support the findings underlying the conclusion that Sears was guilty of unfair competition. The evidence is: The lamp had a decided impact on the market in 1956 as something revolutionary in lighting fixtures. In four years (1956-1960) Stiffel shipped about $3,250,000 in pole lamps. They were widely advertised in national magazines. Sears "moved in" when they saw the Stiffel pole lamp was moving toward a mass market. Sears lamps are not labelled, and the Sears lamp retails at the wholesale price of the Stiffel lamp.

The Stiffel pole lamps and that of Sears made from a copy of a picture of the Stiffel lamp are before us as exhibits. A comparison of the two gives substantial support for the finding that the lamps have a remarkable sameness of appearance. And there is testimony of buyers for Marshall Field and Company and John M. Smyth Company of customer confusion. The finding that there is a likelihood of confusion[6] and some actual confusion, as to the source of the lamps, is not clearly erroneous. The conclusion of unfair competition, based on the finding,[7] is not erroneous.

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[6] The finding of customer confusion does not say "as to the source of the lamps." Clearly, however, that was intended on this record in view of the testimony of the buyers.

[7] Under Illinois law, which governs here, it was unnecessary to prove more than the likelihood of confusion as to the source of the products in order to make out a case of unfair competition.

Sears argues that plaintiff's proof failed to show "palming off" or "secondary meaning" under the law of Illinois as expressed by this court in *Zangerle & Peterson Co.* v. *Venice Furniture Novelty Mfg. Co.*, 133 F. 2d 266, 269 (7th Cir. 1939) and *Day-Brite Lighting, Inc.* v. *Sandee Mfg. Co.*, 286 F. 2d 596, 600 (7th Cir. 1961). In *Independent Nail & Packing Co. Inc.* v. *Stronghold Screw Products, Inc.*, 205 F. 2d 921, 925 (7th Cir. 1953), Judge Duffy said that the rule argued for here is "no longer the law of Illinois," citing *Investors Syndicate of America, Inc.* v. *Edward J. Hughes, Secretary of State*, 378 Ill. 413, 422, 38 N. E. 2d 754, 759 (1942), and *Lady Esther, Ltd.* v. *Lady Esther Corset Shoppe*, 317 Ill. App. 451, 46 N. E. 2d 165 (1943). Judge [fol. 423] Knoch repeated Judge Duffy's statement recently in *Day-Brite Lighting, Inc.* v. *Compco Corp.*, ... F. 2d ..... (7th Cir. Dec. 14, 1962).

For the reasons given the judgment is Affirmed.

Independent Nail & Packing Co. Inc. v. *Stronghold Screw Products, Inc.*, 205 F. 2d 921, 926 (7th Cir. 1953), *National Van Lines* v. *Dean*, 288 F. 2d 5, 9 (7th Cir. 1961). Those were trademark cases, but the rule is also applied in design patent unfair competition cases. *Day-Brite Lighting, Inc.* v. *Compco Corp.*, ____ F. 2d ____ (7th Cir., Dec. 14, 1962).

[fol. 424]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 13724-25

Before: Hon. John S. Hastings, Chief Judge, Hon. Win G. Knoch, Circuit Judge, Hon. Roger J. Kiley, Circuit Judge.

THE STIFFEL COMPANY, Plaintiff-Appellant and Cross Appellee,

vs.

SEARS, ROEBUCK AND CO., Defendant-Appellee and Cross Appellant.

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.

JUDGMENT—January 23, 1963

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Affirmed, in accordance with the opinion of this Court filed this day.

It is further ordered by the Court that the costs of these appeals in this Court be divided equally between the parties.

[fol. 425]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 13724-25

THE STIFFEL COMPANY, Plaintiff-Appellant,
(Cross Appellee)

vs.

SEARS, ROEBUCK AND CO., Defendant-Appellee,
(Cross Appellant)

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.

ORDER DENYING PETITIONS FOR REHEARING—March 4, 1963

It Is Ordered by the Court that the petitions for rehearing filed by plaintiff and defendant in the above cause be, and the same are hereby Denied.

[fol. 426] Clerk's Certificate (omitted in printing).

[fol. 427]

SUPREME COURT OF THE UNITED STATES

No. 1020, October Term, 1962

SEARS, ROEBUCK AND CO., Petitioner,

vs.

THE STIFFEL COMPANY.

ORDER ALLOWING CERTIORARI—June 17, 1963

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and the case is placed on the summary calendar. It is set for argument immediately following No. 1010.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.